



भारत का राजपत्र The Gazette of India

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सं० 24]

नई दिल्ली, शनिवार, जून 16, 2001/ज्येष्ठ 26, 1923

No. 24]

NEW DELHI, SATURDAY, JUNE 16, 2001/JYAISTHA 26, 1923

इस भाग में निम्न पृष्ठ संख्या दी गयी है जिससे कि वह प्रत्येक संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (H)
PART II—Section 3—Sub-Section (H)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय की छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएँ
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(other than the Ministry of Defence)

वित्त मंत्रालय

सारणी

(आर्थिक कार्य विभाग)

(वैकिंग प्रभाग)

नई दिल्ली, 1 जून 2001

का.आ. 1312.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण
उपबंध) स्कीम, 1970 के खण्ड 3 के उप-खण्ड (1),
के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं
अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा
(3) के खण्ड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते
हुए, केन्द्रीय सरकार, एतद्वारा निम्नलिखित सारणी के कालम
(2) में उल्लिखित व्यक्तियों की उक्त सारणी के कालम (3)
में उल्लिखित व्यक्तियों के स्थान पर कालम (1) में उल्लिखित
राष्ट्रीयकृत बैंकों के निदेशक के रूप में तत्काल प्रभाव से
अगले आदेश तक के लिए नामित करती है।

| 1 | 2 | 3 |
|--------------------------|---|----------------------------|
| यूनियन बैंक ऑफ इंडिया | श्री ए.वी. सरदेसाई मुख्य महाप्रबंधक, आर.पी.सी.डी., भारतीय रिजर्व बैंक, केन्द्रीय कार्यालय, मुम्बई। | श्रीमती श्यामला गोपीनाथ |
| बैंक ऑफ महाराष्ट्र | श्री डी.पी.एस. राठौर प्रिंसिपल, कालिज ऑफ एग्री. वैकिंग, पुणे। | श्री ए.बी. सरदेसाई |

[फा.सं. 9/18/2000—बी.ओ.1]

रमेश चन्द, अधिवक्ता

MINISTRY OF FINANCE

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 1st June, 2001

S.O. 1312.—In exercise of the powers conferred by clause (c) of Sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, read with sub-clause (1) of clause 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government, hereby nominates the persons specified in column (2) of the table below as Directors of the nationalised banks specified in column (1) thereof in place of the persons specified in column (3) of the said Table, with immediate effect and until further orders:

TABLE

| (1) | (2) | (3) |
|---------------------|--|------------------------|
| Union Bank of India | Shri A. V. Sardesai, Chief General Manager, RPCD, Reserve Bank of India, Central Office, Mumbai. | Smt. Shyamala Gopinath |
| Bank of Maharashtra | Shri D. P. S. Rathore, Principal, College of Agri. Banking, Pune. | Shri A. V. Sardesai |

[F. No. 9/18/2000-B.O.I.]

RAMESH CHAND, Under Secy.

नई दिल्ली, 7 जून, 2001

New Delhi, the 7th June, 2001

का.आ. 1313.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 56 के साथ पठित बैंककारी विनियमन अधिनियम, 1949 (एएसीएस) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर एतद्वारा घोषणा करती है कि बैंककारी विनियमन अधिनियम, 1949 (एएसीएस) की धारा 11 की उपधारा (1) के उपबन्ध सरकारी राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से 31 मार्च, 2003 तक जिला सहकारी बैंक लि., प्रतापगढ़, उत्तर प्रदेश पर लागू नहीं होंगे।

S.O. 1313.—In exercise of the powers conferred by Section 53 read with Section 56 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government on recommendation of the Reserve Bank of India declares that the provisions of Sub-section (1) of Section 11 of the said Act shall not apply to the Zila Sahakari Bank Ltd., Pratapgarh, Uttar Pradesh from the date of publication of this notification in the Official Gazette to 31 March 2003.

[फा.सं. 1(11)/2001-ए सी]
एल.सी. टूरा, अवर सचिव

[F.No. 1(11)/2001-AC]
L. C. TOORA, Under Secy.

नई दिल्ली, 7 जून, 2001

का.आ. 1314.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 56 के साथ पठित बैंककारी विनियमन अधिनियम, 1949 (एएसोएस) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर एतद्वारा घोषणा करती है कि बैंककारी विनियमन अधिनियम, 1949 (एएसोएस) की धारा 11 की उपधारा (1) के उपबन्ध सरकारी राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से 31 मार्च, 2003 तक जिला सहकारी बैंक लि., मिर्जापुर, उत्तर प्रदेश पर लागू नहीं होंगे।

[फा.सं. 1(12)/2001-एसी]

एल.सी. टूरा, अवर सचिव

New Delhi, the 7th June, 2001

S.O. 1314.—In exercise of the powers conferred by Section 53 read with Section 56 of the Banking Regulation Act, 1949 (10 of 1949) the Central Government on recommendation of the Reserve Bank of India declares that the provisions of sub-section (1) of Section 11 of the said Act shall not apply to the Zila Sahakari Bank Ltd., Mirzapur, Uttar Pradesh from the date of publication of this notification in the Official Gazette to 31 March 2003.

[F. No. 1(12)|2001-AC]

L. C. TOORA, Under Secy.

नई दिल्ली, 7 जून, 2001

का.आ. 1315.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 56 के साथ पठित बैंककारी विनियमन अधिनियम, 1949 (एएसोएस) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर एतद्वारा घोषणा करती है कि बैंककारी विनियमन अधिनियम, 1949 (एएसोएस) की धारा 11 की उपधारा (1) के उपबन्ध सरकारी राजपत्र में इस अधिसूचना के प्रकाशन की तारीख

से 31 मार्च, 2003 तक देवरिया-कामिया जिला सहकारी बैंक लि., देवरिया, उत्तर प्रदेश पर लागू नहीं होंगे।

[फा.सं. 1(13)/2001-ए सी]

एल.सी. टूरा, अवर सचिव

New Delhi, the 7th June, 2001

S.O. 1315.—In exercise of the powers conferred by Section 53 read with Section 56 of the Banking Regulation Act, 1949 (10 of 1949) the Central Government on recommendation of the Reserve Bank of India declares that the provisions of sub-section (1) of Section 11 of the said Act shall not apply to the Deoria-Kasia District Co-operative Bank Ltd., Deoria, Uttar Pradesh from the date of publication of this notification in the Official Gazette to 31 March 2003.

[F. No. 1(13)|2001-AC]

L. C. TOORA, Under Secy.

वाणिज्य एवं उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 31 मई, 2001

का.आ. 1316.—निर्यात क्वालिटी नियंत्रण अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार मैसर्स थैराप्यूटिक्स केमिकल रिसर्च कार्पोरेशन जो कि 9 ए, फर्स्ट स्ट्रीट सेकेन्ड एवेन्यू, अणोक नगर, मद्रास-600083 में स्थित है और जिनका रजिस्ट्रीकृत कार्यालय शिव इंडस्ट्रीयल इस्टेट दूसरी मंजिल, अन्ति श्रीभाई बालमकुन्द रोड, निकट वायकुला गुड्स डिपो बम्बई-400012 में है को 14-4-2001 से और तीन वर्ष की अवधि के लिए इस अधिसूचना के प्रकाशन द्वारा खनिज तथा ग्रयस्क (ग्रुप I) और (ग्रुप II) के निर्यात में पूर्व निरीक्षण हेतु निम्नलिखित शर्तों के अधीन मद्रास में निर्यात से पूर्व निरीक्षण करने की मान्यता प्रदान करती है, अर्थात् :—

(i) मैसर्स थैराप्यूटिक्स केमिकल रिसर्च कार्पोरेशन खनिज तथा ग्रयस्क ग्रुप 1 और 2 के निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अंतर्गत निरीक्षण का प्रमाण पत्र

देने के लिए अपने द्वारा अपनाई गयी प्रक्रिया की जांच कर करने के लिए इस संबंध में निर्यात निरीक्षण परिषद द्वारा नामित अधिकारी को पर्याप्त सुविधाएं देगी।

(ii) मैसर्स थेराप्यूटिक्स केमिकल्स रिसर्च कॉर्पोरेशन इम अधिसूचना के अधीन अपने कृत्यों के पालन में निदेशक (निरीक्षण एवं क्वालिटी नियंत्रण) द्वारा समय-समय पर लिखित में दिए गए निर्देशों से आबद्ध होंगे।

[फाईल सं. 5(8)/2001 ई आई एण्ड ई पी]

पी. के. दास, निदेशक

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 31st May, 2001

S.O. 1316.—In exercise of the powers conferred by the Sub-section (1) of Section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby recognises, for a further period of three years from 14-4-2001, M/s. Therapeutics Chemicals Research Corporation located at 9 A, First Street, Second Avenue, Ashok Nagar, Madras-600 083 and having their registered office at Shiv Industrial Estate, IInd Floor, Kranti Veerabhai Balmakund Road, Near Byculla Goods Depot, Bombay 400 012 as an Agency for the inspection of minerals and ores (Group-I) and (Group-II), prior to export at Madras subject to the following conditions, namely :—

- (i) that M/s. Therapeutics Chemicals Research Corporation shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in granting the certificate of inspection under Rule 4 of the Export of Minerals and Ores Groups I and II (Inspection) Rules, 1965;
- (ii) that M/s. Therapeutics Chemicals Research Corporation in the performance of their function under this notification shall be bound by such directives as the Director (Inspection and Quality Control) may give in writing from time to time.

[File No 5(8)/2001-EL&EP]

P. K. DAS, Director.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय
(उपभोक्ता मामले विभाग)

नई दिल्ली, 4 जून, 2001

का.आ. 1317.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम 10 के उप नियम (4) के अनुसरण में उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय के अधीन भारतीय मानक ब्यूरो, नई दिल्ली के निम्नलिखित शाखा कार्यालय, जिसके 80 प्रतिशत से अधिक अधिकारियों/कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है :—

भारतीय मानक ब्यूरो,
गुवाहाटी शाखा कार्यालय,
53/5, बार्ड नं. 29,
आर. जी. बरूआ रोड, पांचवीं बार्ड लेन,
अपूर्वा मिन्हा पथ, गुवाहाटी-781003

[संख्या ई-11012/4/2000-हिन्दी]

आई.एम. सोधी, उप सचिव

MINISTRY OF CONSUMER AFFAIRS,

FOOD & CONSUMER AFFAIRS

(Department of Consumer Affairs)

New Delhi, the 4th June, 2001

S.O. 1317.—In pursuance of Sub-rule (4) of Rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following branch office of Bureau of Indian Standards, New Delhi under the Ministry of Consumer Affairs, Food and Public Distribution where more than 80% of the staff have acquired working knowledge of Hindi :—

Bureau of Indian Standards,
Guwahati Branch Office,
53/5, Ward No. 29,
R. G. Barua Road,
5th Bye Lane, Apoorva Sinha Path,
Guwahati.

[F. No. E-11012/4/2000-Hindi]

I.M. SO NDH, Dy. Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 15 जून, 2001

का.आ. 1318.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. 2569 तारीख 17.11.2000 द्वारा हरियाणा राज्य के कुरुक्षेत्र से उत्तर प्रदेश राज्य के सहारनपुर तक विद्यमान मथुरा जालंधर पाइपलाइन से पेट्रोलियम उत्पादों के परिवहन के लिए एक शाखा पाइप लाइन बिछाने के प्रयोजन हेतु उस अधिसूचना में संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार के अर्जन के अपने आशय की घोषणा की थी;

और उक्त राजपत्र अधिसूचना की प्रतियां जनता को तारीख 08.12.2000 से उपलब्ध करा दी गयी थी;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 उपधारा (1) के अनुसरण में केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार का उक्त रिपोर्ट पर विचार करने के पश्चात यह समाधान हो गया है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया जाना चाहिए।

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग का अधिकार अर्जित किया जाता है।

यह और कि केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निदेश देती है कि उक्त भूमियों में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने के बजाय सभी विल्लंगों से मुक्त इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित होगा।

अनुसूची

तहसील : जगाधरी

जिला : यमुना नगर

राज्य : हरियाणा

| गांव का नाम | हदबस्त सं० | मुस्ततील सं०/ किला सं० | क्षेत्र | | |
|-------------|------------|---------------------------|----------|-----|----------|
| | | | हेक्टेयर | एअर | वर्गमीटर |
| 1 | 2 | 3 | 4 | 5 | 6 |
| खुर्दबन | 17 | 94 | — | 23 | 27 |
| मथाना | | 107 | — | 04 | 81 |
| | | 124 | — | 00 | 76 |
| पोटली | 16 | 60 | — | 01 | 01 |
| रपड़ी | 13 | 31/15 | — | 01 | 77 |
| फतेहगढ़ | 14 | 218 | — | 01 | 52 |
| रजहेड़ी | 15 | 81 | — | 01 | 26 |
| लाल छप्पर | 28 | 362 | — | 01 | 01 |
| माजरी | 29 | 45 | — | 01 | 01 |
| | | 67 | — | 00 | 51 |

[सं. आर.-31015/44/2000-ओ. आर. I]

एस. चन्द्रशेखर, अव्वर सचिव

Ministry of Petroleum and Natural Gas

New Delhi, the 15th June, 2001

S. O. 1318.— Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 2569 dated the 17th November, 2000 issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipeline (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the lands specified in the Schedule appended to that notification for the purpose of laying branch pipeline for the transport of petroleum products from Kurukshetra in the State of Haryana to Saharanpur in the State of Uttar Pradesh from existing Mathura – Jalandhar pipeline.

And, whereas, the copies of the said Gazette notification were made available to the public from the 8th day of December, 2000.

And, whereas, the Competent Authority in pursuance of sub-section (1) of section 6 of the said Act has submitted his report to the Central Government.

And, whereas, the Central Government after considering the said report is satisfied that the right of user in the land specified in the Schedule appended to this notification should be acquired.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in the lands specified in the Schedule appended to this notification are hereby acquired.

And further, in exercise of the powers conferred by sub-section (4) of section 6 of the said Act, the Central Government hereby directs that the right of user in the said land shall instead of vesting in the Central Government, vest from the date of publication of this declaration, in the Indian Oil Corporation Limited free from all encumbrances.

Schedule

Tehsil : Jagadhari

District Yamuna Nagar

State : Haryana

| Name of Village | Hadbast | Mustateel No/ Killa No | Area | | |
|-----------------|---------|---------------------------|---------|-----|----------|
| | No. | | Hectare | Are | Sq. Mtr. |
| 1 | 2 | 3 | 4 | 5 | 6 |
| Khurdban | 17 | 94 | - | 23 | 27 |
| | | 107 | - | 04 | 81 |
| | | 124 | - | 00 | 76 |
| Potli | 16 | 60 | - | 01 | 01 |
| Rapri | 13 | 31/15 | - | 01 | 77 |
| Fateh Garh | 14 | 218 | - | 01 | 52 |
| Rajheri | 15 | 81 | - | 01 | 26 |
| Lal Chappar | 28 | 362 | - | 01 | 01 |
| Majri | 29 | 45 | - | 01 | 01 |
| | | 67 | - | 00 | 51 |

[No R-31015/44/2000 OR-I]
S CHANDRASEKHAR, Under Secy

अम मंत्रालय

नई दिल्ली, 18 मई, 2001

का.सा. 1319.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार यूको बैंक के प्रबंधकों के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, पटना के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-5-2001 को प्राप्त हुआ था।

[सं. एल-12012/426/95-आई आर (बी-II)]

अजय कुमार, डेस्क अधिकारी

MINISTRY OF LAECUR

New Delhi, the 18th May, 2001

S.O. 1319.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Patna as shown in the annexure in the Industrial Dispute between the employers in relation to the management of UCO Bank and their workman, which was received by the Central Government on 18-5-2001.

[No. L-12012/426/95-IR(B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL, PATNA

Reference Nos. 49 of 1996

Ref. No. 9(c) of 2001

Management of UCO Bank, Patna and their workman Sri. M. P. Pandey represented by the State Secretary, UCO Bank Employees Association, Patna.

For the Management—Sri Atul Sinha, Assistant Chief Officer, UCO Bank, Patna.

For the workman—Sri B. Prasad, State Secretary, UCO Bank Employees Association, Patna.

PRESENT :

Sri S. K. Mishra, Presiding Officer, Industrial Tribunal, Patna.

AWARD

The 11th May, 2001

Initially in exercise of powers U/s 10(1)(d) of the Industrial Disputes Act, 1947 the Central Government by notification No. 12012/426/95-I.R. (B-II) dated 10th April, 1996 referred the following industrial dispute between the Management of UCO Bank and its workman Sri M. P. Pandey represented by the State Secretary, UCO Bank Employees Association, Patna to Central Industrial Tribunal No. II, Dhanbad for adjudication.—

“Whether the action of the Management of UCO Bank, Patna in dismissing Sri M. P. Pandey, 1709 GI/2001—3

Head Cashier from service w.e.f. 8-11-1979 is legal and justified? If not, what relief is the said workman entitled to?”

It appears from the record that both parties filed their respective written statements before the Central Industrial Tribunal, Dhanbad. A rejoinder to the written statement of the Management was also filed on behalf of the workman. After completion of hearing when the case was pending in the Central Industrial Tribunal, Dhanbad for writing out the Award the Central Government by a subsequent notification No. 12012/426/95-IR(B-II) dated 23-11-2000 in exercise of powers U/s. 7(A) read with sub-section (1) of Section 33-B of the I.D. Act withdrew the proceedings from the Central Industrial Tribunal No. II, Dhanbad and transferred it to this Tribunal with a direction that this Tribunal should proceed with the proceedings from the stage at which the proceedings are transferred to it and to dispose of the same according to law.

2. The admitted facts of the case in brief are that the concerned workman Sri M. P. Pandey joined the service in United Commercial Bank, a Nationalised Bank, in October, 1964 as a Cashier at Bhagalpur Branch of the said Bank, subsequently he was promoted to the post of Head Cashier in the year 1971 and was posted at Labour Branch of the Bank from where he was transferred to Tarapur Branch in the year 1974. While working as Head Cashier at Tarapur Branch in the District of Monghyer an explanation was called for from the workman in regard to certain illegalities and irregularities allegedly committed by him while posted as Head Cashier at Sabour Branch. Thereafter the workman submitted his reply that he would be able to give reply only after he was relieved from Tarapur Branch as he was holding the key of the said Branch. Subsequently the workman was served with a chargesheet under six heads and was suspended by the Dy. General Manager vide his order dated 15-9-75 for the charges enumerated in the said order. The workman on receipt of the chargesheet submitted his reply on 18-12-1975 in which he denied those charges levelled against him and called for certain documents in connection with the charges to which the Bank Management did not reply. The disciplinary proceedings were initiated subsequently and Sri K. P. Lal, the then Manager of Bhagalpur Branch of the Bank was appointed as Enquiry Officer. The Enquiry Officer started holding domestic enquiry from 15-4-1976 and asked the workman to attend the enquiry at Sabour. The workman appeared before the Enquiry Officer and claimed to be defended by a defence representative Sri P. C. Singh and also claimed that the disciplinary action should not be proceeded until the defence representative was provided to him. The proceedings continued on various dates until 10th July, 1976 when the workman insisted for supply of copies of documents and also for providing Sri P. C. Singh as the defence representative. The workman also alleged bias on the part of the Enquiry Officer and made a representation for change of the Enquiry Officer. The Management examined witnesses and also produced documents in support of the charges. Subsequently an additional charge was added as detailed in the letter of the Management dated 27-6-1974. Both the copies of the chargesheet and the letter dated 27-6-74 relating to the additional charge have been annexed to

the written statement of the Management as Annexure-1 and Annexure-2. After completion of the enquiry, the Enquiry Officer submitted his inquiry report finding that the charges had been substantiated against the workman vide the report dated 21-3-1979. On 21-4-1979 the Disciplinary Authority passed an order proposing imposition on dismissal from service. The Disciplinary Authority by order dated 3-5-1979 granted personal hearing of the workman at Calcutta Office fixing 11 A.M. on 21-5-1979. The workman however could not attend the office of the Disciplinary Authority at that time due to late arrival of the train. He appeared before the Disciplinary authority subsequently. On 13-7-1979 the Disciplinary authority dismissed the workman making the order effective from 31-5-1979. Thereafter the workman appealed against the order of dismissal before the Appellate Authority on 8th November, 1979. The Appellate Authority dismissed the appeal and confirmed the order of dismissal from service. Thereafter the workman filed a Title suit No. 19/1980 challenging the order of punishment of dismissal from service before the Addl. Munsif, Monghyr and by judgement and order the Addl. Munsif held the order of suspension and dismissal as illegal and void. He could not grant any relief because according to him the remedy was available under the Industrial Disputes Act. Against the Judgement and decree of the Trial Court the workman preferred a Title appeal No. 1180 in the Court of District Judge, Monghyr. The appeal was subsequently transferred to the file of Addl. District Judge Monghyr who decided on 23-6-1993 affirming the findings of the Addl. Munsif regarding illegality of the orders of suspension and dismissal. The Addl. District Judge agreed with the view of the Addl. Munsif that no relief could be granted since the appropriate remedy is provided in the I.D. Act. Thereafter the workman filed a writ petition before the Hon'ble Patna High Court on 21-9-1993. This writ petition was heard on 31-1-1995 when the writ petition was permitted to be withdrawn for seeking remedy under the provisions of the I.D. Act. While disposing the writ petition the Hon'ble Court made an observation that since the case got a chequered history it is expected that if a reference is made the Industrial Tribunal shall dispose it in accordance with law expeditiously. Thereafter as per the direction of the Hon'ble Court the workman approached the UCO Bank Employees Association and the State Secretary of the said Association espoused the case of the workman before the Assistant Labour Commissioner (C), Patna on 10-4-1995. The A.L.C. (c) Patna intervened in the matter and held conciliation proceedings on a number of dates but without any result and then he submitted his failure conciliation report on 29-11-1995 before the Government of India, New Delhi and the Government after subjective satisfaction have in turn referred this industrial dispute before the Industrial Tribunal for adjudication.

3. The further case of the workman is that the domestic enquiry was unfair and the principles of natural justice were not followed. In spite of repeated requests and letters the Management failed to provide any defence representative to the workman until one or two dates at the closing stage of the proceedings. In spite of repeated demands no list of witnesses or copies of documents upon which the Management relied for the charges were supplied to the workman.

The Enquiry Officer was biased against the workman. The Enquiry Officer recorded his own version in the alleged statements of witnesses. The statements of witnesses so recorded were not signed by the witnesses nor the same were authenticated by the Enquiry Officer. In spite of repeated demands by the workman and also by his legal representative for the change of the Enquiry Officer nothing was done. The Enquiry Officer failed to maintain day to day proceedings of the domestic enquiry. Thus according to the workman the domestic proceeding was conducted almost ex-parte against him and no proper opportunity was given to him to defend himself. As the finding of the Enquiry Officer and the punishment inflicted by the Disciplinary Authority are based upon such unfair and biased domestic enquiry the same cannot be maintained.

4. The case of the Management on the other hand is that all possible opportunity was afforded to the workman to defend himself. The domestic enquiry was fair and the allegation that the Enquiry Officer was biased against the workman had no basis. Sufficient and reliable evidence was adduced by the Management at the time of Domestic Enquiry and the Enquiry Officer rightly held that the charges were proved against the workman. The Disciplinary authority had also provided ample opportunity to the workman to defend himself before the punishment of dismissal was inflicted.

5. However, the question of fairness of otherwise of the domestic enquiry no longer arises for determination at present. My predecessor after hearing both the sides by his order dated 22-4-1998 decided the same question as a preliminary issue. As the Management had failed to file the original papers of the domestic enquiry my predecessor by his said order decided that the domestic enquiry was unfair and it was held in violation of the principles of natural justice. So now the questions to be determined are whether the Management has been able to prove the charges against the workman in this Tribunal, if so, whether punishment inflicted is proper and reasonable.

6. The following were the charges which the workman faced at the domestic enquiry :—

- (i) While he was posted as the Head Cashier at Sabour Branch of the Bank on various dates between 8-9-1971 to 1-8-1973 he was deputed by Sabour Branch to accompany remittance of cash from Sabour Branch to Bhawalpur Branch and/or for bringing cash/cheques/exchanging notes from State Bank of India Bhawalpur Branch to Sabour Branch. He allegedly caused false vouchers for conveyance charges to be prepared by Mr S D Thakur and Mr M N Chaudhary the Manager and a clerk respectively, of the Sabour Branch. He allegedly got the vouchers signed in the names of fictitious persons and wrongfully drew the said amounts himself from the Branch. It is alleged that no Taxi had been hired for the purpose and the registration numbers of vehicles mentioned in some of those vouchers were fictitious ones. It was further alleged that for such remittances the workman used his own Motor Cycle and as such no expenses had been incurred as mentioned in those vouchers.

- (ii) On 3-1-1972, 1-4-1972, 22-4-1972, 25-5-72 and 31-5-1972 the workman was deputed by the Sabour Branch to accompany remittance of cash from Sabour Branch to Bhagalpur Branch. On those dates the Branch had hired the Jeep belonging to Bihar Agriculture College, Sabour for the purpose of remittance of cash. The said College charged Rs. 43.76 paise only for the use of the Jeep on 3-1-1972, 1-4-1972 and 28-4-1972 and Rs. 10 for the journey undertaken on 25-6-1972 and 31-5-1972, but the workman dishonestly got false vouchers prepared by the said Branch Manager and clerk for conveyance charges and got them signed in the names of fictitious persons in token of receipt of the amount and thereby the workmen dishonestly drew a sum of Rs. 360. It is alleged that the excess amount drawn by him as aforesaid was misappropriated by him.
- (iii) On 8-2-1972 the workman dishonestly caused to be prepared by Mr. N. R. Choudhary a false voucher for conveyance charges said to have been incurred by him on that date in connection with the alleged exchange of notes. There is no entry at all in the cash remittance register regarding exchange of notes on 8-2-1972 and the voucher in that connection is a fictitious one.
- (iv) On 10-10-1972 the workman allegedly obtained an advance of Rs. 1000 from the Branch which was adjusted on 24-11-1972 after lapse of 45 days by debiting from his S. B. Account. Although it was purely a loan obtained by him from the Branch the workman in collusion and conspiracy with the Branch Manager Sri S. D. Thakur falsely stated in the relative voucher dated 10th October, 1972 that the above amount had been received by him against B. P. No. 130. It is discovered that no cheque had been tendered by him on the said date for the above amount to the Branch for purchase. The particulars of the cheque alleged to have been tendered by him were also not entered in the relative vouchers.
- (v) The workman in violation of the rules of the Bank allegedly was having monetary dealings and transactions with M/s. Silk Manufacturing Company, Bhagalpur, a customer of the Branch. On 29-9-1972 he wrongfully allowed B.P. No. 107 purchased by the Branch from the said Firm to be adjusted by debiting from his S.B. Accounts.
- (vi) On 4-11-1971 B.P. No. 18 drawn on Bhagalpur Branch of the Bank for Rs. 25 was purchased from the workman by the Branch which was later adjusted on 30-12-1971 by debiting the amount to his S.B. Account. Again on 3-1-1972 the Bills purchased A/C was debited by Rs. 25 and the amount was recredited to his S.B. Account 53. It is further alleged that on 16-5-1972 a sum of Rs. 50 was recovered on account of com-

mission on B.P. No. 61 for Rs. 10,000 covering cheques of Bhagalpur Branch purchased from M/s. Avtar Cycle Stores. It is further noticed that out of the commission so recovered from M/s. Avtar Cycle Stores a sum of Rs. 25 was only credited to "Exchange Commission A/C" and the balance a sum of Rs. 25 was credited in "Bills Purchase A/C" in adjustment of his B.P. No. 18/71. Thus in collusion and in conspiracy with the Manager Sri S. D. Thakur the workman allegedly misappropriated a sum of Rs. 25 belonging to the Bank.

7. The workman has examined himself as w.W. 1. In his deposition he has denied the charges. In his deposition he has said that he used to perform the duties of Cash Remittance/Exchange of notes etc. on the basis of the order of the Branch Manager Sri S. D. Thakur. The vehicles for the purpose of remittance etc. were arranged by the Manager. The hire charges of the vehicles were paid under the order of the Branch Manager and also under vouchers prepared by the Manager. He has denied that he ever travelled by his own Motor Cycle for the purpose of cash remittance, exchanges etc. He has denied that he requested or influenced the Branch Manager to prepare false vouchers for any inflated amount. The workman has admitted that the vehicle of the Agriculture University, labour was requisitioned on hire basis by the Branch Manager. The workman has admitted that he visited Bhagalpur Bank for the purpose of cash remittance on 3-1-1972, 1-4-1972, 28-4-1972, 25-5-72 and 31-5-1972 by the said vehicle of the Agriculture University. According to the workman the Branch Manager himself paid the hire charges of the vehicle. In cross-examination he has denied that there was any double payment in this regard.

8. The witness has further said that on 8-2-1972 he visited Bhagalpur Branch for the purpose of exchange of notes by a vehicle. According to the workman on 10-10-1972 he took an advance for B.P. No. 130 and due to delay in receiving the receipt of the bill the amount was adjusted against his account in the Bank. The workman has denied that he was connected in any way as partner or otherwise with the Silk Manufacturing Company. He merely had requested the Branch Manager for B.P. in favour of the said Silk Manufacturing Co. The workman has said that he got a Bank draft for Rs. 25 prepared from Sabour Branch of the Bank on 4-12-1971. On 31-12-1971 the B.P. outstanding was adjusted. After such adjustment a sum of Rs. 25 was credited in his account on 3-1-1972. According to the workman such adjustment and credit was made due to the Annual closure of the account. The workman has further said that the Branch Manager used to prepare exchange commission voucher, for B.P. etc. under his signature. In cross-examination the workman has said that it is not the duty of the Cashier Incharge to cause transfer of excess amount or to collect the amount if found less, but it is the duty of the Branch Manager to do all these things. In case of a proposal for remittance the Manager himself arranged the vehicles to carry the cash. He used to make payment on the basis of the vouchers but before making payment he used to satisfy himself about the identity of the persons receiving the payment for vehicles. According to the workman the Manager used to settle the charge for hiring Taxi.

The workman never arranged any Taxi himself. In the register of the Bank the remittance only used to be entered for hire vehicle but for the purpose of exchange of any cash no such entry used to be made in that register showing payment of charges of any Taxi. Similarly the remittance collected from out side of the Bank is not noted in the register indicating preparation of the vouchers for payment of hire charges. In cross-examination the workman has said that he had received a sum of Rs. 1000 on 10-10-72 as proceeds of B.P. 130. It is the duty of the Account Section to make entry of such B.P. in the relevant register. He cannot say whether the Account Section had entered the B.P. in the relevant register. He has denied that as Head Cashier of the Bank it was his duty to receive cheque or instrument. According to him the Manager used to receive the same for B.P. The workman has further said that a sum of Rs. 1000 as against B.P. No. 130 was recovered from his account on 24-11-1972. On 29-9-1972 B.P. 107 was passed at his instance and the amount against that B.P. was also recovered from his account. The workman has further said that he arranged a B.P. for a sum of Rs. 25 for his own account and the said sum of Rs. 25 was also recovered from his account. Such recovery of Rs. 25 from his account was made as the B.P. was on the Annual closing of account day. The workman has denied that a sum of Rs. 50 had been charged as collection charge but the same was not credited wholly in the Bank's account and a sum of Rs. 25 was credited in his B.P. account and while rest against Rs. 25 in the Bank's account.

9. Thus, on close examination of the oral evidence of the workman it cannot be said that the workman has admitted to any of the charges. The Management has failed to confront relevant vouchers or registers to contradict the workman.

10. Zerox copies of certain documents filed on behalf of the workman have been marked Exts. W/1 to W/30 on formal proof having been dispensed with. Most of them are the xerox copies of various letters which were exchanged between the workman and his legal representative with Enquiry Officer and other authorities in relation to the question of unfairness of domestic enquiry. Ext. W/3 is the xerox copy of the chargesheet. Ext. W/25 is the xerox copy of the order of the Disciplinary Authority dated 21-4-1979 dismissing the workman. Ext. W/31 is the xerox copy of the Logue Book of Jeep No. BRJ-1213 belonging to Agricultural College, Sabour. Ex. W/1 is the xerox copy of the order of the Hon'ble High Court passed in the writ petition. Ext. W/29 is the xerox copy of the extract of the judgment of the Additional Munsif. The xerox copy of the extract of the order of Additional District Judge, Monghyer has also been filed.

11. As I have mentioned earlier my predecessor (Central Industrial Tribunal No. II, Dhanbad) by his order dated 22-4-1998 held the domestic enquiry unfair. In that order it was made clear that the Management was at liberty to adduce evidence for the purpose of bringing home the charges levelled against the workman. Thereafter several dates were given for evidence of the Management but the Management failed to adduce any evidence either documentary or

oral. On 27-8-1998 the concerned workman was examined as W.W. 1 and he was cross-examined by the Management on 10-6-1999. Thereafter a petition was filed on behalf of the Management praying for an opportunity to produce documents and to examine witnesses. My predecessor by his rather a lengthy order dated 22-7-1999 after hearing the parties rejected the petition of the Management for filing documents or for examining the witnesses to prove the charges. My predecessor on 2-9-1999 heard arguments of both sides and kept the Award reserved. Then the Reference case was transferred and it was received in my file on 13-2-2001. A petition was also filed by the Management in this Tribunal for filing its documents and to adduce oral evidence. After hearing the parties this Tribunal by its order dated 19-4-2001 are rejected the prayer for the reasons detailed in that order.

12. Thus, the Management did not file any document or examine any witness to substantiate the charges till the completion of the hearing of the case and till the rejection of the petition of the Management for adducing oral and documentary evidence by my predecessor vide his order dated 2-7-1999. In spite of refusing permission to file documents and to adduce oral evidence the Management after two months filed zerox copies of certain documents on 2-9-1999 along with its written argument. In the circumstances those documents cannot be considered as against the workman. The said documents were filed after the close of evidence of both sides and at the time of hearing arguments. Thus, the workman got no opportunity either to adduce any evidence in rebuttal or to explain those documents said to be incriminating against him. In the written argument the Management has tried to prove the charges referring to those documents and the statements of witnesses recorded at the time of domestic enquiry. As has been mentioned in the written statement filed on behalf of the Management as many as five witnesses were examined by it at the time of domestic enquiry. Neither copies of the depositions of those witnesses have been filed nor any of those witnesses have been examined by the Management before this Tribunal. The documents filed at the belated stage by the Management include zerox copies of some vouchers, remittance register, B.P. register, Logue Book of the vehicle of the Agriculture College, Sabour, the enquiry report etc. Even if those documents are considered, in my view, the same by themselves would not be sufficient to prove any of the charges against workman beyond doubt in view of clear denial of the charges by the workman in his deposition. The zerox copies of the documents filed by the Management have not also formally and legally been proved.

13. Thus, I find that the Management has failed to substantiate the charges even before this Tribunal. As a matter of fact it has not adduced any legal evidence in this regard. In this view of the matter I hold that the action of the Management of UCO Bank, Patna in dismissing the concerned workman Sri M. P. Pandey, Head Cashier from service w.e.f. 8-11-1979 is illegal and unjustified.

14. As to the question what relief the workman is entitled to, Sri B. Prasad representative of the workman is fairly did not press for any back wages till the industrial dispute was raised as more than 21

years have elapsed. The claim of Sri Prasad appears reasonable that the concerned workman be reinstated w.e.f. 8-11-1979 and to be paid the back wages only w.e.f. 10-4-1995 when the present industrial dispute was raised by UCO Bank Employees Association on behalf of the workman.

15. Thus, I hold that the workman is entitled to reinstatement in service w.e.f. 8-11-1979 when he was dismissed from service but he will not be entitled to any back wages for the period prior to 10-4-1995. He will be entitled to back wages w.e.f. 10-4-1995. The Reference is answered accordingly.

16. The Management is directed to implement the award within a period of one month from the date of publication of the award. This is my Award.

S. K. MISHRA, Presiding Officer

नई दिल्ली, 21 मई, 2001

का.स. 1320.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नोर्दन रेलवे, चण्डीगढ़ के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चण्डीगढ़ के पचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 21 मई 2001 को प्राप्त हुआ था।

[सं. एल-41012/159/99/आई आर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 21st May, 2001

S.O. 1320.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Northern Railway and their workman, which was received by the Central Government on 21-5-2001.

[No. L-41012/159/99 IR(B-I)]

AJAY KUMAR, Desk Officer
ANNEXURE

BEFORE SHRI B. L. JATAV, PRESIDING
OFFICER, CENTRAL GOVT. INDUS-
TRIAL TRIBUNAL-CUM-LABOUR COURT,
CHANDIGARH

Case No. I.D. 181/99

Shri Gian Singh S/o
Shri Data Ram Singh C/o
Divisional Secretary,
Uttar Railway Karamchhari.
A. C. Kapoor Ahata, .. Workman.

Vs.

The Divisional Railway,
Manager, Northern Railway,
Near New Delhi Railway,
Station, New Delhi. .. Management.

APPEARANCE :

For the workman : Shri Ashwani Kumar.

For the Management : Sh. P. P. Khorana.

AWARD

(Passed on 3rd May, 2001)

The Central Govt. vide notification No. L-41012/159/99/IR(B-I) dated 30-8-1999 has referred the following dispute to this Tribunal for adjudication :—

“Whether the action of Divisional Railway Manager Western Railway, New Delhi in removing Shri Gian Singh S/o Sh. Data Ram Singh (Turner) from his services w.e.f. 15-7-1982 without any enquiry etc. by invoking Rule 14(ii) of Railway servants Discipline and Appeal Rules 1968 is just and legal ? If not to what relief the workman is entitled to ?”

2. Rep. of the workman appeared today and made the statement that the workman has gone abroad and the union does not want to pursue with the present reference. In view of the statement of the rep. of the Union, present reference is returned to the Ministry for want of prosecution. Appropriate Govt. be informed.

Chandigarh.

3-5-2001.

B. L. JATAV, Presiding Officer

नई दिल्ली, 21 मई, 2001

का.स. 1321.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सर्वेन रेलवे, मदुराई के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[सं. एल-41012/142/(अ)/98 आई आर(बी-1)]

अजय कुमार डेस्क अधिकारी

New Delhi, the 21st May, 2001

S.O. 1321.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Southern Railway, Madurai and their workman, which was received by the Central Government on 21-5-2001.

[No. L-41012/142(A)/98-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 4th May, 2001

PRESENT :

K. Karthikeyan, Presiding Officer.

Industrial Dispute No. 95/2001

(Tamil Nadu Industrial Tribunal I.D. No. 43/99)
(In the matter of the dispute for adjudication under section 10(1)(d) and sub-section 2(A) of the Industrial Disputes Act, 1947, between the Workman Sri R. Subramani, Dindugal and the Management, Southern Railway, Madurai.)

BETWEEN

Shri R. Subramani,

Dindugal, . . . Workman/I Party

AND

1. The Divisional Railway Manager,
Southern Railway.

2. The Divisional Safety Manager,
Divisional Office,
Southern Railway,
Madurai. . . Management/II Party

APPEARANCE :

For the Workman—M/s. K. Ilango & G. Chamki
Raj, Advocates.

For the Management—Mr. P. Arulmudi, Advocate.

REFERENCE :

Order No. L-41012/142(A)/98 dated 4-3-99,
Government of India, Ministry of Labour,
New Delhi.

This dispute on coming up before me for final hearing on 20-4-2001, upon perusing the reference, Claim Statement, Counter Statement and documentary evidence filed on behalf of the Workman/I Party and other material papers on record and upon hearing the arguments of Sri K. Ilango, advocate for the I Party/Workman and Sri P. Arulmudi, Advocate for the Management/Respondent and this dispute having

stood over till this date for consideration, this Tribunal passed the following:—

AWARD

This reference by the Central Government in exercise of the powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act in respect of dispute between Shri R. Subramani, Workman and the Divisional Manager, Southern Railway, Madurai, Management, mentioned as Schedule appended to the order of reference.

The Schedule reads as follows:—

“Whether the action of the Divisional Railway Manager, Madurai in compulsorily retiring the services of the Workman Shri R. Subramani with effect from 20-2-97 is justified? If not, to what relief, he is entitled to?”

2. This order of reference was made to Tamil Nadu Industrial Tribunal as an industrial dispute for adjudication and the same was taken on file by that Tribunal as I.D. No. 43/99. On receipt of notice from that Tribunal, both the parties appeared with their respective counsel and filed their respective Claim Statement and Counter Statement. When the matter was pending enquiry in that Tribunal, this case has been transferred from the file of Tamil Nadu Industrial Tribunal, as per the orders of the transfer issued by the Central Government to the file of this Tribunal. On receipt of records from that Tribunal, this case was taken on file as I.D. No. 95/2001 on 16th January, 2001. Notices were sent to the counsel on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal with their respective parties to prosecute this case. On the first hearing on 30-1-2001, the counsel appearing on either side were present and at the request of the counsel for the Management, the case was adjourned to 14-2-2001, extending time till then for the Management to file their documents. On 14-2-2001, with the consent by the counsel on either side 14 documents were marked as Ex. W1 to W14. Then at the request of the counsel on either side, the case was adjourned to 28-2-2001 for further enquiry and on that day, on the consent given by the counsel on either side, further documents were marked as W15 to W17. Then on the representation made by the counsel for the II Party/Management that they have no oral or documentary evidence to let in and the counsel for the I Party has also represented that the Workman has no more evidence, hence the evidence was closed and at the request of the counsel on either side, the case was posted to 15-3-2001 for hearing arguments on either side. Subsequently, the counsel on either side have filed the written arguments apart advancing their oral arguments on behalf of the respective parties and the case was adjourned to this date for orders.

3. The brief particulars of this industrial dispute between the parties are as follows:—

The I Party/Workman (hereinafter referred to as Petitioner) had been working under the II Party/Management (hereinafter referred to as Respondent) for the past 36 years. From June, 1964 the Petitioner

was working as a Pointsman at Akkaripatti near Dindigul. He was rostered for duty for 36 hours continuously from 19.00 hrs. on 24-9-94 to 07.00 hrs. on 26-9-94. Shri K. Malayalam Muthuswamy was the Station Master Grade III/Akkaraipatti and he was on night shift on 25/26-9-94 from 12.00 O'clock midnight to 6.30 hrs. on 26-9-94. After completion of duty on 26-9-94 the said Mr. Malayalam Muthuswamy and the Petitioner were standing at the bus stop, awaiting arrival of the bus. At that time, the Petitioner had told Mr. Malayalam Muthuswamy that on 25-9-94 he did not give the correct keys for the signal and the petitioner had also told him that he was careless in his duty on 24-7-94 as well. Immediately Sri Malayalam Muthuswamy retorted that 'who are you to instruct, you low caste fellow?' The Petitioner took objection to the same and stated that he would be forced to lodge a complaint under P.C.R. Act. The Petitioner then boarded the bus to Dindigul. The Petitioner gave a complaint to the Inspector, PCR Cell, Dindigul Police Station against the said Sri Malayalam Muthuswamy. The wordy duel sparked off a controversy and a fact finding enquiry was conducted on 27-9-94 and 28-9-94 based on a control message given the 2nd Respondent by Sri S. Sankaran, RGSM/TMP on duty at Akkaraiipatti. The fact finding team submitted a report. Consequently the Petitioner was issued with charge memo dated 29-11-94. The articles of charges framed against the Petitioner is that while he was working as Pointsman/Akkaraipatti, has acted in a manner unbecoming of a Railway servant in that he who had been rostered to duty upto 8.00 hrs. on 26-9-94 had deserted his duty spot on his own accord and manhandled Shri Malayalam Muthuswamy on off duty at about 6.30 hrs. in the area before station house and that this act is in violation of the provisions of GR 2.10(b) and Rule 3.1(iii) of the Railway Service, (Conduct) Rules, 1966 and deserting duty spot leads to the violation of GR 2.07 and Rule 3.1(ii) of the Railway Services (Conduct) Rules, 1966. The Petitioner gave an explanation refusing the charges framed against him and prayed for setting aside the same. The 2nd Respondent having not satisfied with the explanation given by the Petitioner appointed Shri M. Mani, APO/MDU as the Enquiry Officer to enquire into the charges levelled against the Petitioner. Shri F. Jeeva, SCP/API, Sri P. Karupiah, Keyman/API and Sri S. Sankaran, RG SM/III/TMP were examined as P.W.1 to P.W.3 respectively. Sri P. Karupiah, SCP/API and M. Chinnasamy, P. Man/API were examined as D.W.1 and D.W.2 respectively. The Petitioner's request for examining one Sri Kandhaswamy was turned down. He gave his written submissions dated 25-8-96 to the Enquiry Officer pointing out how the charges have been fabricated. The Enquiry Officer submitted his report finding the Petitioner guilty of the charges. The said findings of the Enquiry Officer are perverse. Based on the findings of the Enquiry Officer, the 2nd Respondent imposed penalty of removal from service with effect from 20-2-1997 by his advice dated 30-1-97. The Petitioner preferred an appeal against that the said order to the 1st Respondent on 11-3-97. Thereafter, the 1st Respondent called him for a personal hearing on 30-5-97. Unfortunately, the Petitioner could not attend the same as his defence helper was not permitted to accompany him. The 1st Respondent confirmed the penalty of compulsory retirement with effect from 20-2-97 by his

order dated 25-9-97. Then the Petitioner has raised an industrial dispute before the conciliating authority, which ended in failure. Then on submission of conciliation, failure report by the conciliating authority, the Government was pleased to refer this matter as an industrial dispute to the Tribunal for adjudication.

4. It is further alleged by the Petitioner in his Claim Statement that the action of the 1st Respondent in compulsorily retiring from service is unjustified, arbitrary and illegal and against the principles of natural justice. The findings of the Enquiry Officer are perverse. The entire report proceeded only on the basis of the prosecution witnesses and has failed to take note of the defence submissions. The request of the Petitioner to examine the independent witness Sri Kandasamy was denied. Hence, the enquiry is vitiated and against the principles of natural justice. The Enquiry Officer has failed to take note that there was no complaint made by Sri Malayalam Muthuswamy against the Petitioner. The Respondent has not established the charges that the Petitioner has deserted his duty since the exact time of the incident as alleged in the charge memo has not been corroborated by any of the prosecution witnesses. The evidence of the defence witness that Sri Malayalam Muthuswamy was in the habit of insulting the employees and he had also been vindictive towards them has not been taken note of by the Enquiry Officer. The evidence in this case does not support the charges. The enquiry was not held fair and proper. The Petitioner has been denied a fair opportunity to present his case. Hence, this Tribunal may be pleased to pass an award holding that the order passed by the 1st Respondent compulsorily retiring the Petitioner from service is unjustified and to direct the Respondent to pay all the benefits including back wages due to the Petitioner till 28-2-98, the date of his actual retirement.

5. The Respondent has denied all these allegations in the Counter and has stated that a complaint from the Station Master/API Station was received on 26-9-94 that Sri K. Malayalam Muthusamy, Station Master Gr. III/Akkaraipatti Station, who performed 6.00 hrs. duty was assaulted by the Petitioner in front of the Station premises. Based on which, it was ordered for a fact finding enquiry. Accordingly, the Traffic Inspector/Inspector, Railway Protection Force, Dindigul conducted fact finding enquiry on 27-9-94 and 28-9-94 and submitted their joint report along with statements of witnesses. In that joint report, they gave findings that the Petitioner had assaulted Sri Malayalam Muthusamy on the Railway Feeder Road of API at about 6.45 hrs. on 26-9-94 during his duty. Thus, the Petitioner had violated Railway Service (conduct) Rules, 1966 3.1(ii) lack of devotion to duty—Act of disregarded duties. Desertion of duty post & 3.1(iii) indiscipline. Based on the report, a charge memo was issued by the Divisional Safety Officer, Madurai to the Petitioner. Since the Petitioner has denied the charge by his written statement, an enquiry was conducted under Rule 9(2) of the Railway Servants (Discipline & Appeal) Rules, 1968. As per the request of the Petitioner, he was allowed to have assistance of a defence helper for perusal of the records and for further enquiry proceedings. The Petitioner had taken part in the enquiry, availing full

opportunity to put forth his defence. The Enquiry Officer submitted his findings that the charges against the charge sheeted employee has been proved and the act of the Petitioner is a misconduct in violation of provisions of 2.10(b) and Rule 3.1(iii) of Railway Service (Conduct) Rules, 1966 is proved. The Disciplinary Authority on the basis of the findings submitted by the Enquiry Officer passed an order removing the petitioner from service with effect from the forenoon of 20th February, 1997. The appeal preferred by the Petitioner to the Appellate Authority was also dismissed. Then, after the conciliation proceedings, the matter has been referred to by the Central Government for adjudication to this Tribunal. The Petitioner's normal date of retirement is 28-2-98. Since he has already put in 33 years of qualifying service, on compulsory retirement he is entitled for payment of full pensionary benefits, as if he has retired on superannuation. His settlement of dues were made on 3-11-1998. Hence, this Hon'ble Tribunal may please be dismissed this industrial dispute as devoid of merits.

6. The points for my consideration are—

- (i) whether the domestic enquiry conducted against the Petitioner/Workman is vitiated and against the principles of natural justice; and
- (ii) whether the action of the Management in compulsorily retiring the services of the Petitioner/Workman with effect from 20th February, 1997 is justified? If not, to what relief, the Petitioner/Workman is entitled?

Point No. 1:

The Petitioner/Workman had put in more than 33 years of service in the Respondent/Management. During the alleged period of misconduct, he was working as Pointsman at Akkaraipatti near Dindigul. He was on duty on 24-9-94 from 19.00 hrs. to 7.00 hrs. on 26-9-94. One Shri K. Malayalam Muthuswamy was on duty as Station Master Gr. III/Akkaraipatti on night shift on 25/26-9-94 from 12.00 O'clock midnight to 6.30 hrs. on 26-9-94. The Station Master one Sri Sankaran gave a message to the Divisional Safety Officer, Divisional Office, Southern Railway, Madurai on 26-9-94. A copy of that message is Ex. W1. In that it is stated that Shri K. Malayalam Muthuswamy, SM/III/AI performed 6.30 hrs. duty date has been assaulted by Sri Subramani S. No. 6076, Pointsman A. APT at 7.00 hrs. in front of the Station premises. After assaulting he made a complaint under PCR station at DG. Please take necessary action. On the basis of his control message under Ex. W1, a joint enquiry was held by Sri Sundararajan, IPF/DG and Sri P. J. Johnson, TI/DG on 27-9-94 and 28-9-94. Apart from the Petitioner Sri Subramani, Pointsman/API and the Station Master and other six people were examined by them as witnesses. The deposition of Sri Malayalam Muthuswamy, one Mr. Chinnasamy, Mr. P. Karuppaiah and Sri. S. Sankaran, who gave the control message under Ex. W1 are exhibits W2 to W5 respectively. The findings of that Joint Enquiry Committee is Ex. W6. In that Ex. W6, the Joint Enquiry Committee gave a finding that in the enquiry it is proved that Sri K. Malayalam Muthuswamy, Station Master Gr. III/Akkaraipatti was as-

saulted at Railway Feeder Road, Akkaraipatti by S. Subramani, Pointsman, Akkaraipatti at about 6.45 hrs. on 26-9-94 during his duty. Thus, he violated the Railway Service (Conduct) Rules, 1966 3.1(iii) lack of devotion to duty—Act of disregarded duties, desertion of duty post and 3.1(iii) indiscipline. Subsequent to that a departmental enquiry was conducted, after issuing a charge memo dated 29-11-94 to the Petitioner. The Enquiry Officer, Sri M. Mani, APO/MDU had conducted an enquiry into the alleged misconduct mentioned in the charge memo against the Petitioner. The enquiry xerox copy of the enquiry proceedings of the Enquiry Officer is Ex. W8. The copy of charge memo issued to the I Party/Petitioner has not been filed in the Court. From Ex. W8, the enquiry proceedings, it is seen that in the presence of the chargesheeted employee/Petitioner Shri Subramani, the enquiry was conducted by the Enquiry Officer and during the enquiry one Mr. Balaguruswamy has assisted the Petitioner as defence helper in the enquiry. From the enquiry proceedings it is seen that the Petitioner has perused the documents relied upon by the Management and he availed the services of Shri N. Balagurusamy, as defence helper and he got the photocopies of the documents. He has also cited three persons as defence witnesses namely F. Jeeva, P. Karuppaiah and S. Sankaran were examined as witnesses for the Management and Sri Karuppaiah and Sri Chinnasamy were examined as defence witnesses. All the Management witnesses PW1 to PW3 were cross examined by the defence helper in detail. All the days' proceedings were signed by the Enquiry Officer, chargesheeted employee and the defence helper apart from the respective witnesses examined both on Management side as well as Workman side. On completion of the enquiry, the Petitioner has submitted his written submission to the Enquiry Officer. A xerox copy of the same is Ex. W17. A xerox copy of the findings of the Enquiry Officer is Ex. W9. After considering the entire evidence let in before him both by the Management and the delinquent employee, the Enquiry Officer gave his finding stating that the charge against the delinquent employee as misconduct alleged in the charge sheet against him has been proved and the said misconduct is an act in violation of the provisions of GR 2.10(b) and Rule 3.1(iii) of the Railway Service (Conduct) Rules, 1966. Ex. W10 is the xerox copy of the Penalty Advice issued to the Petitioner/Workman by the Divisional Safety Officer, Madurai, stating that the Petitioner is removed from service of Railway Administration with effect from the forenoon of 20th February, 1997. The said order is dated 30th January, 1977. As it is stated in that order that he can prefer an appeal, if any, to the Appellate Authority within 45 days on receipt of that order Ex. W11 is the xerox copy of the appeal given by the Petitioner/Workman to the Appellate Authority. The Appellate Authority, Divisional Railway Manager, Madurai, in his order dated 25th September, 1997 modified the penalty imposed by the Disciplinary Authority of removing from service to one of compulsory retirement with effect from 20th February, 1997. A xerox copy of the Appellate Authority's order is Ex. W14. A perusal of all these documents go to show that the Petitioner as delinquent employee facing the enquiry as a charge sheeted employee has been given fair and proper opportunity to defend himself and he was assisted

by the defence helper and he has cross examined all the Management witnesses and has examined two witnesses as his defence witnesses and he has also given a personal hearing by the Appellate Authority before ever he passed the order under Ex. W14. From all these things, it is seen that the Petitioner/Workman was given fair and sufficient opportunity to defend his case in the domestic enquiry and the Enquiry Officer conducted the domestic enquiry in a fair and proper manner giving sufficient opportunity to the delinquent employee to defend himself fully. Thus, he has conducted the enquiry in a fair manner strictly following the rules of evidence and following the rules for conducting the enquiry. Though the Disciplinary Authority has imposed penalty of removal from service under his Penalty Advice under Ex. W10, the Appellate Authority under Ex. W14 have modified it into one of the compulsory retirement from service, so as to enable the Petitioner to avail his all benefits and the Appellate Authority also have passed that order after giving him an opportunity of personal hearing. From all these things, it is seen that the domestic enquiry conducted by the Management against the Petitioner/delinquent employee is not vitiated and it is not against the principles of natural justice. Thus, in answer the point accordingly.

Point No. 2 :

A perusal of the records available in this case including enquiry proceedings go to show that the Enquiry Officer has arrived at the finding that the charge against the delinquent employee has been proved relying upon the evidence placed before him both on the side of the Management and the Workman through oral and documentary evidence. So, it cannot be said that the findings given by the Enquiry Officer is perverse and without any evidence as such to prove the charge of alleged misconduct against the Petitioner/Workman. The report given by the Joint Enquiry Committee prior to the domestic enquiry, as a fact finding committee under Ex. W7 also go to show that there is sufficient material in this case for the Management to come to the conclusion that the Petitioner/Workman has committed misconduct in violation of provisions of G.R. 2.10(b) and Rule 3.1(iii) and G.R. 2.07 and Rule 3.1(iii) of Railway Service (Conduct) Rules, 1966. So far as the domestic enquiry is concerned, the Enquiry Officer need not bent upon to give a finding only on the alleged charge of misconduct mentioned in the charge sheet against the chargesheeted employee as proved fully under the principles of Evidence Act it is suffice for him to come to the conclusion to give a finding on preponderance of probability. On that basis it is seen from the records in this case that sufficient materials were available before the Enquiry Officer to come to the conclusion that the charge sheeted employee has committed misconduct as alleged in the charge sheet in violation of the Rules mentioned in the Railway Service (Conduct) Rules, 1966. Though the Disciplinary Authority has imposed a punishment of removal from service, the Appellate Authority considering the past, long service of the Petitioner has modified the punishment to the one of compulsory retirement from service. So from all these things, it is seen that the action of the Divisional Manager in compulsorily retiring the services of the workman Sri R. Subramani with effect from 14-2-97 is justified.

1709 GI/2001—4

Hence, the Petitioner is not entitled to any relief. Thus, I answer the point accordingly. Further, it is the allegation of the Respondent/Management in their Counter that after the failure of the conciliation proceedings, the Petitioner had represented to the DRM stating his readiness to receive dues, without prejudice to his right to raise dispute at higher forum vide his letter dated 24-8-98 and before that date he had not preferred any claim. Based on that his settlement dues were made on 3-11-98. This is not denied by the Petitioner. From all these things it is seen that the Management has settled the dues to the Petitioner, after retiring him compulsorily from service, as per the Appellate Authority's order.

7. In the result, an award is passed holding that the Petitioner is not entitled to any relief, as prayed for. No Cost.

(Dictated to the Stenographer, transcribed & typed by him and corrected & pronounced by me in the open court on this day the 4th May, 2001).

K KARTHIKEYAN, Presiding Officer

Witness Examined :

On either side : NONE.

Documents Marked :

For I Party/Workman :

- Ex. W1 26-09-94—Xerox copy of Control message given to the 2nd Respondent by S. Sankaran (Station Master).
- Ex. W2 27-09-94—Xerox copy of Deposition of Sri Malayalam Muthusamy before the Joint Enquiry Committee.
- Ex. W3 27-09-94—Xerox copy of deposition of M. Chinnasamy before the Joint Enquiry Committee.
- Ex. W4 27-09-94—Xerox copy of deposition of P. Karuppiyah before the Joint Enquiry Committee.
- Ex. W5 28-09-94—Xerox copy of report of S. Sankaran, RGSM III, to TI/Dindigul.
- Ex. M6 —Xerox copy of Findings of the Joint Enquiry Committee.
- Ex. W7 28-10-94—Xerox copy of report given by F. Jeeva to the 2nd respondent.
- Ex. W8 10-10-95 to 19-08-96—Xerox copy of Enquiry Proceedings.
- Ex. W9 16-10-96—Xerox copy of the Findings of the Enquiry Officer.
- Ex. W10 30-01-97—Xerox copy of Penalty advice given by the 2nd Respondent to remove the Petitioner from his service.
- Ex. W11 11-03-97—Xerox copy of Appeal against the penalty award.
- Ex. W12 02-05-97—Xerox copy of Petitioner's reminder to the 1st Respondent.
- Ex. W13 04-08-97—Xerox copy of Petitioner's letter to the 1st Respondent.
- Ex. W14 25-09-97—Xerox copy of order passed by the 1st Respondent.

Ex. W15 15-09-95—Xerox copy of duty roster.

Ex. W16 15-09-95—Xerox copy of Extract of station diary dated 24-09-94 to 26-09-94.

Ex. W17 25-08-96—Xerox copy of Petitioner's letter to the Enquiry Officer.

नई दिल्ली, 21 मई, 2001

का.आ.1322—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेन्ट्रल बैंक आफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जड़ीगढ़ के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-01 को प्राप्त हुआ था।

[स. एल-12013/4/98-आई आर (बी-II)]
अजय कुमार डेस्क अधिकारी

New Delhi, the 21st May, 2001

S.O. 1322.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Chandigarh as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 21-5-2001.

[No. L-12013/4/98-IR(B-II)]
AJAY KUMAR, Desk Officer
ANNEXURE

BEFORE SH. B. L. JATAV, PRESIDING
OFFICER, CENTRAL GOVT., INDUS-
TRIAL TRIBUNAL CUM-LABOUR
COURT, CHANDIGARH

Case No. I.D. 19 of 1999

The General Secretary,
Central Bank of India Employees.
Union (Haryana), 129 Lal Kurti,
Ambala. .. Petitioner.

Vs.

The Regional Manager,
Central Bank of India,
Regional Office, Delhi Road,
Rohtak-124001. .. Respondent.

REPRESENTATIVES :

For the workman : Shri B. S. Gill.

For the Management : Shri R. K.
Dhiman.

AWARD

(Passed on 23rd April, 2001)

The Central Govt. Ministry of Labour vide Notification No. L-12013/4/98/IR(B-II) dated 14th December 1998 has referred the following dispute to this Tribunal for adjudication :—

“Whether the action of the management of Central Bank of India in stoppage of checking allowance to Sh. V. D. Sharma, w.e.f. August, 1992 and onwards is just and legal? If not, to what relief the workman is entitled?”

2. Rep. of the workman appeared and filed an application for withdrawing the case as the Union does not want to pursue with the present reference. In view of the above, since the Union does not want to pursue with the present reference, the same is returned to the Ministry as no dispute award. Appropriate Govt. be informed.

Chandigarh.

23-4-2001

B. L. JATAV, Presiding Officer

नई दिल्ली, 21 मई, 2001

का.आ.1323—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बड़ोदा के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जयपुर के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-01 को प्राप्त हुआ था।

[स. एल-12012/348/97-आई आर (बी-II)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 21st May, 2001

S.O. 1323.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Jaipur as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 21-5-2001.

[No. L-12012/348/97-IR(B-II)]
AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, JAIPUR

Case No. CGIT-B-12/98

Reference No. L-12012/348/97-IR(B-II) dated
23-2-98.

Vikash Chaturvedi
S/o Sh. Kedar Chaturvedi
Aged 30 years. R/o Behind
Panchayat Samiti Bandikui
District Dausa.

...Applicant

Versus

Management of Bank of Baroda
Through Dy. General Manager
Regional Office, Sansar Chand Road,
Jaipur.

...Non-applicant

ATTENDANCE :

For the applicant.—Sh. S. K. Jarn, Advocate.

For the non-applicant.—Shri T. P. Sharma,
Advocate.

Date of Award.—9-4-2001.

AWARD

The Central Government vide order referred above has referred the following industrial dispute under clause (d) of the sub-section (1) and sub-section (2) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as the Act, 1947) for adjudication.

“Whether the action of the management of Bank of Baroda, Jaipur in terminating the services of Shri Vikash Chaturvedi, Class-IV employee w.e.f. 10-11-96 without paying him notice pay in lieu of notice of one month and retrenchment compensation in violation of Section 25-F of I.D. Act, 1947 though he has completed more than 240 days of service during a year (10-11-95 to 9-11-96) prior to the date of termination and junior workman Shri Deepak Sharma and Kishan Lal Saini were employed without giving him any opportunity of employment in violation of Sec. 25-H of the said Act is legal and justified? If not, to what relief the said workman is entitled and from what date?”

The applicant filed the statement of claim alleging that he was appointed as Class-IV employee on daily wage from 3-1-95 in the Bank of Baroda (hereinafter referred as the Bank) and he continued to work there upto 9-11-96 against the vacant post. His services however were terminated suddenly by an oral order dated 9-11-96. Thereafter he submitted representation dated 21-11-96 to the Deputy General Manager of the Bank but with no response. He gave further representation but with no result. His services were terminated in violation of Section 25-F, G and H of the Act, 1947 and rule-77 of the Industrial Disputes (Central) Rules, 1957 (hereinafter referred as the Rules, 1957). It was prayed that the order of retrenchment be set aside and he may be

reinstated with back wages with interest @ 18 per cent per annum and all consequential reliefs.

In the reply on behalf of the Bank it was stated that the applicant was engaged as casual worker only to meet out casual work of the Bank and he had never worked for 240 days in a calendar year. It was further stated that the applicant had not made proper party in the petition where he had worked. The applicant was not appointed against any sanctioned or vacant post. He worked from 3-1-95 to 18-3-95 for a period of 62 days only for shifting of the record of the Bank. The applicant himself left the job and, therefore, the issue of termination of service does not arise. It was denied that the applicant submitted any representation in respect of termination of his service. It was also denied that services of the applicant were terminated in violation of the provisions of Act, 1947.

The applicant filed rejoinder to the reply reiterating the facts mentioned in the claim petition. It was denied that the applicant was appointed on casual basis. It was stated that the fact that the applicant worked continuously from 3-1-95 to 9-11-96 can be ascertained from the daily vouchers of the Bank and conveyance vouchers as per the muster roll. It was denied that the applicant left the job himself.

In support of the claim the applicant filed his own affidavit. The learned counsel for the non-applicant was given opportunity to cross examine him on his affidavit. The applicant also filed the affidavit of Shri Nand Singh but he could not be produced for cross examination. On behalf of the Bank affidavit of Shri K. K. Thakor, Manager (Personnel) was filed. The learned counsel for the applicant was given opportunity to cross examine him on his affidavit. As regards production of documents affidavit of Shri P. C. Godha was filed. In the form of documentary evidence copies of vouchers Ex. M-1 were filed.

Heard arguments of the learned counsel of the parties and perused the record.

The following points arise for determination :—

- (1) Whether the applicant had worked in the branch M. I. Road of the Bank as Class-IV employee from 3-1-95 to 9-11-96 and had worked for 240 days in the year preceding to the date of termination?
- (2) Whether Shri Deepak Sharma and Shri Kishan Lal Saini were employed by the Bank after termination of services of the applicant without giving him any opportunity of employment?
- (3) Whether the management of the Bank has violated provisions of Section 25-F and H of the Act, 1947?
- (4) To what relief the applicant is entitled?

The points are decided as follows :—

Point No. 1.—The applicant has stated that he worked in branch M. I. Road of the Bank from 3-1-95 to 9-11-96 as class-IV employee on daily wage @ Rs 40 per day. He has also stated that

wages paid to him upto 9-11-96 were entered in the accounts of the Bank. He has further stated that record including salary slip voucher and attendance register of the daily wages is kept in the Bank. The attendance of Shri Nand Singh Chauhan who was employed in the Bank was also entered in the attendance register. In cross examination he has stated that payment was made to him through vouchers and attendance was also recorded in attendance register. He has denied that he had worked from 3-1-95 to 18-3-95 only and has stated that further payment was also made to him. On the other hand Shri K. K. Thakor, Manager (Personnel) in the Bank has stated that the applicant was engaged from 3-1-95 to 18-3-95 for a period of 62 days for shifting of the records from the godown of the Bank to the premises of the Bank. The applicant had not worked for 240 days in a calendar year. The Bank does not maintain any record of the casual worker. He has stated that he has seen vouchers from 3-1-95 to 18-3-95 and after 18-3-95 there was no record as regards payment made to the applicant. The attendance register is maintained for permanent employees and not for casual workers. No separate record is maintained for preparing vouchers. The vouchers made available to him were seen by him. He has no knowledge about payment of conveyance charges. He has denied that the applicant was used to go in the Bank for opening the branch. The Officer proceeding on leave in the middle of the week, used to tell the officer working in his place about the work being done by a person. He has denied that the applicant had worked for more than 62 days. He has stated that the entry of the vouchers is made in the cash book. He has seen the vouchers and not other documents. There are no rules about maintenance of attendance register of the casual workers.

The learned counsel for the applicant has contended that the applicant has filed an application for production of documents. The application was allowed but the documents were not produced by the non-applicant. Mr P. C. Godha who has filed affidavit about not maintaining the attendance register etc. was not produced for cross examination in spite of the request made by the applicant, Shri K. K. Thakor was not posted in the M. I Road branch of the Bank at the time the applicant had worked and therefore, he cannot have personal knowledge about the work of the applicant and the affidavit sworn by him on the basis of personal knowledge has no value in the eyes of law. He has further contended that in the above circumstances an adverse inference has to be drawn against the non-applicant for non-production of the record and the applicant's statement that he worked in the Bank from 3-1-95 to 9-11-96 continuously should be believed. On the other hand the learned counsel for the non-applicant has refuted the above contentions of the learned counsel for the applicant. He has contended that the applicant has failed to prove that he had worked from 3-1-95 to 9-11-96 continuously and on the contrary it is proved that he had worked from 3-1-95 to 18-3-95, only for a total period of 62 days. He has also contended that no adverse inference can be drawn against the non-applicant for the production of the record which does not exist.

As regards production of documents the applicant had filed an application on 30-7-99. In reply to the application affidavit of Shri P. C. Godha was filed.

Thereafter the applicant filed an application on 15-9-99. The application dated 30-7-99 and 15-7-99 were disposed of by order dated 29-11-99 and the non-applicant was directed to produce the record or in case the same is not available to file an affidavit to that effect. The documents were not produced and affidavit of Shri P. C. Godha was filed on 31-1-2000. It may be stated that on filing of the affidavit of Shri P. C. Godha on 31-1-2000 no prayer was made by the applicant to cross examine him. In his affidavit P. C. Godha has stated that no regular record is maintained of the casual workers. He has stated that appointment letter, termination letter, attendance register are not available in the Bank. The above record is maintained for the permanent employees only. The applicant had worked for a period of 62 days from 3-1-95 to 18-3-95. With reference to the applicant there is no pay slip, conveyance voucher for opening and closing of the Bank. The applicant was paid only through vouchers. Adverse inference can be drawn about non-production of records only when the same is available with the party but fails to produce the same. The applicant has stated that attendance register etc. were maintained in respect of daily wages. On the other hand Shri P. C. Godha and Shri K. K. Thakor have stated that no such record is maintained for casual workers. It is difficult to rely upon the statement of the applicant in this regard. The applicant in cross examination has stated that he was given appointment letter in writing while in the para-2 of the claim it has been stated that his appointment was oral. He has stated that he has sent 8 representations in respect of termination of his service which fact has been denied on behalf of the non-applicant. The applicant has not produced copy of any representation alleged to have been sent by him to the non-applicant. It is, therefore, difficult to believe that he made representations. I do not find any reason to disbelieve the statement of Shri P. C. Godha and Shri K. K. Thakor that no such record is maintained about the casual workers and through vouchers payment is made to the casual workers. On the basis of the vouchers made available to Mr. Thakor the applicant had worked from 3-1-95 to 18-3-95 for a period of 62 days. Although K. K. Thakor was not posted in the M. I. Road branch of Bank where the applicant had worked, but there appears to be no reason as to why the above branch of the Bank might have withheld the vouchers as regards payment to applicant. When there were no vouchers with the Bank for making payment to the applicant after 18-3-95 question of their production does not arise. Although Shri K. K. Thakor in verification of his affidavit has stated that the contents of the affidavit are true to his personal knowledge but later on has clarified that knowledge was derived from the record. His statement is thus based on the record and simply because he has given the above statement as regards the basis of the contents of the affidavit, his statement cannot be ignored. In the above circumstances in my view no adverse inference is required to be taken against non-applicant for non-production of record. On the basis of the vouchers through which the payment was made to the applicant, the applicant had worked for 62 days only during the period from 3-1-95 to 18-3-95. The applicant's statement that he had worked from 3-1-95 to 9-11-96 and worked for more than 240 days cannot be believed. The applicant thus has failed to

prove that he had worked from 3-11-95 to 9-11-96 continuously or had worked for 240 days in the year preceding to the date of his termination i.e. 10-11-96.

Point No. 2.—The applicant neither in the statement of claim nor in his affidavit has stated that Shri Deepak Sharma and Shri Kishan Lal Saini were employed by the Bank after termination of his service. There is thus no evidence that the above persons were given appointment after termination of services of the applicant. On the other hand Shri K. K. Thakor has stated that no person has been engaged after the termination of the services of the applicant. Thus it is not proved that Shri Deepak Sharma and Shri Kishan Lal Saini were appointed after termination of the services of the applicant.

Point No. 3.—On the basis of above discussion it has not been proved that the applicant had worked for 240 days in the year preceding to the termination of service, therefore, the provisions of Section 25-F of the Act, 1947 are not attracted. Violation of Section 25-H of the Act, 1947 on the part of the non-applicant is also not proved as the applicant has failed to prove that Shri Deepak Sharma and Shri Kishan Lal Saini were given appointment after termination of his service.

The learned counsel for the applicant has also contended that before retrenchment no seniority list was published as required under rule-77 of the Rules 1957 by the non-applicant and, therefore, termination of the services of the applicant is illegal. Firstly, it may be stated that there is no reference about violation of rule-77 of the Rules, 1957. Secondly, the applicant has admitted that he was the sole casual worker in the branch of the Bank. The question, therefore, of preparing the seniority list does not arise in these circumstances.

On the basis of the findings given above the termination of services of the applicant cannot be held to be illegal and unjustified. The applicant is, therefore, not entitled to any relief.

The copies of the Award may be sent to the Central Government under Section 17(1) of the Act, 1947 for publication.

Sd./-

Presiding Officer

नई दिल्ली, 21 मई, 2001

का.आ. 1324.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोलकाता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[सं. एल-12012/189/97-आई आर (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 21st May, 2001

S.O. 1324.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kolkata as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Allahabad Bank and their workman, which was received by the Central Government on 21-5-2001.

[No. L-12012/189/97-IR(B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL AT KOLKATA

Reference No. 19 of 1998

PARTIES :

Employers in relation to the management of
Allahabad Bank.

AND

Their Workmen.

PRESENT :

Mr. Justice Bharat Prasad Sharma, Presiding
Officer.

APPEARANCES :

On behalf of Management : Mr. P. K. Mukherjee,
Advocate with Mrs. R. Kar, Advocate.

On behalf of Workmen : None.

STATE : West Bengal. INDUSTRY : Banking.

AWARD

By Order No. L-12012/189/97-IR (B-II) dated 28th May, 1998 the Central Government in exercise of its powers under Sections 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Allahabad Bank, Eastern Zonal Office, 19, Neni Sengupta Sarani, Calcutta-87, not regularising Shri Dilip Kumar Karmakar as special assistant is justified? If not, to what relief the workman is entitled?"

2. The reference in question has been raised by the Allahabad Bank Staff Association on behalf of one Dilip Kumar Karmakar an employee of the Allahabad Bank and a member of the Association. According to the union Shri Karmakar was earlier attached to Calcutta Main Branch of the Allahabad Bank and was deputed to Calcutta Clearing House under the control of the Reserve Bank of India as representative of the Allahabad Bank alongwith another staff Shri Pradyut Kr. Dutta. The nature of job being performed by them in the Clearing House was of a special assistant as per bipartite settlement. It is stated on behalf of the union that the matter was taken up before the Hon'ble Supreme Court and the posts of Clearing House Representatives were declared the posts of Special Assistant. According to the union

Shri Karmakar was working as representative of Allahabad Bank in the Clearing House since May, 1969. It is also further stated that after the order of the Hon'ble Supreme Court the management of the Bank paid a specified allowance to Shri Karmakar with arrears on 6th May, 1977. From July, 1977 to February, 1982 Shri Karmakar continued to work as Clearing House Representative of Allahabad Bank. From February, 1982 to July, 1995 he was working as Special Assistant attached to Calcutta Clearing House and was drawing a special allowance of Rs. 629 per month as per bipartite settlement. In the mean time, the management appointed Shri Karmakar as Encoder Operator with effect from April, 1989 which carried a lower special allowance than the post which he was holding. It is stated that the special allowance for the post of Encoder Operator happened to be Rs. 245 only per month. It is stated that as per the rules for promotion, the persons drawing lower allowance may opt for higher allowance carrying post. It is also stated that Dilip Kumar Karmakar requested the management from time to time to regularise him in the post of Special Assistant in the Service Branch of the Bank in Calcutta as he continued to function on the post of Special Assistant for a period of 25 years. In this view of the matter, the union raised an industrial dispute before the Regional Labour Commissioner and conciliation efforts were made, but it did not materialise and the matter was reported to the appropriate authority and the reference was made. It is stated that the said workman, Shri Karmakar was asked to perform the duties of Special nature in ordinary course and not due to sudden increase of work or administrative exigency. It is also stated that during the intervening period large number of vacancies of Special Assistants in the Allahabad Bank were created and filled up, but the management did not pay any heed to the request of the workman concerned. Rather, he was given a post carrying lower special allowance and thus loss has been caused to him and he has suffered. So, it has been prayed that he should be ordered to be regularised on the post of Special Assistant with all other consequential benefits.

3. The management also appeared on notice and filed a written statement. It was pleaded, inter alia, on behalf of the management that the reference itself is not proper and valid and it is not fit to be maintained, because it relates to interpretation of the provisions of the memorandum of settlement dated 22nd April, 1989 and such a dispute can be resolved only under the provisions of Section 36A of the Industrial Disputes Act, 1947. It has been stated that it is a fact that Shri Dilip Kumar Karmakar, who was working as a Clerk at the Calcutta Main Branch, was being sent to the Bank's Clearing House for representing the Bank where Shri Pradyut Kr. Dutta had already been working. It is also stated that the job at Clearing House was declared as a special nature of job attracting special allowance and accordingly arrear allowances were paid to the said workman. But, later two other persons, namely, Shri Kamal Deb Mukherjee and Smt. Utpala Ganguly were appointed as Special Assistants for representing the Bank at the Clearing House in June/July, 1977. However, Smt. Utpala Ganguly for some reason could not be sent to the Clearing House with immediate effect and so Shri Pradyut Kr. Dutta had to be deputed to the Clearing

House on usual special allowance and Shri Karmakar was asked to officiate as Special Assistant as and when required. However, the Clearing Cell of the Calcutta Main Branch was subsequently declared as Service Branch, Calcutta on 4-5-1987 within the control of the Calcutta Main Branch. Shri Karmakar was also appointed as Encoder Operator of the Branch with effect from 26-4-1989 and he also performed the duties of Special Assistant from time to time according to requirement on payment of appropriate special allowance in terms of the memorandum of settlement. It has been stated on behalf of the management that though Shri Karmakar had performed the duties of Special Assistant for a pretty long time, his duties were need-based and temporary in nature and the Bank has to follow certain clear norms and procedure for selection of Special Assistant in the identified vacancy as per provisions of the memorandum of settlement of 1989. Therefore, it has been stated on behalf of the management that merely because Shri Karmakar was officiating as Special Assistant from time to time according to the necessity, it did not entitle him to be appointed on the post of Special Assistant against the norms and policy of the Bank in accordance with the bipartite settlement. It has been clearly stated that actually Shri Karmakar was never appointed to the post of Special Assistant as such, nor he worked as Special Assistant continuously during the period and his employment was only casual need based and intermittent. Accordingly, it was denied that there is any substance in the claim of the union regarding the regularisation of Shri Karmakar in the post of Special Assistant.

4. Both the parties adduced evidence and produced some documents which were also admitted into evidence. So far as the documents are concerned, all the documents are not relevant, excepting for a few which shall be referred hereafter.

5. On behalf of the union two witnesses have been examined. First witness is Shri Dilip Kumar Karmakar, the concerned workman himself and the second witness is Shri Sudhanshu Ranjan Saha, the General Secretary of the union concerned. WW-1, Dilip Kumar Karmakar has stated that he was appointed as a Clerk in the Main Branch of the Allahabad Bank at Calcutta and he was being paid special allowance for higher responsibility being discharged by him. He has stated that he was for large number of years deputed as Special Assistant in the Clearing House for which he was getting special allowance also. In his cross-examination he has stated that a Clerk is entitled to get special allowance of the post, if such post is a special allowance carrying post. He has also stated that he had only acted on officiating basis in the Clearing House and he was not appointed on that post. He has expressed his inability in his cross-examination to point out any circular to show that any person officiating on a particular post was entitled to hold that post permanently. He has further stated that on a Dip Narayan Khatri was appointed as Special Assistant of Clearing House, while his claim was ignored, but admitted that said Shri Khatri was senior to him in service. He has also admitted that creation of post is management's prerogative and his only claim to the post is based on continued officiation for a number of years.

WW-2 has also supported the claim of the concerned workman by saying that Shri Karmakar was regularly deputed on a post carrying special allowance as a Special Assistant and he was entitled to hold that post. In his cross-examination, he has admitted that receipt of special allowance by any employee does not necessarily mean his posting in the special allowance carrying post and he has also further stated that the procedure for appointment or assignment of any employee to any special post is set out in the bipartite settlement itself. However, he has also stated that he could not say as to exactly what particular provision of the bipartite settlement and promotion policy was violated in this case. He said that in the agreement dated 11-1-1975 the Bank's promotion policy could be found out.

6. On the other hand, two witnesses examined on behalf of the management are Shri Sanjay Bhandopadhyay and Shri Prasanta Kumar Mondal. They have stated that Shri Karmakar was deputed to work as a Special Assistant in the Clearing House on payment of special allowance no doubt, but it was on the basis of the requirement from time to time. Both of them have stated that because a person works on a post of higher responsibility on special allowance, he does not become entitled to hold that post permanently. It is interesting to note that these witnesses for the management were not cross-examined and therefore their statements have remained uncontroverted. MW-1 has stated that Ext. M-4 happens to be the relevant part of the settlement containing provisions of special allowance and MW-2 has stated that Exts. M-4, M-5 and M-6 are the relevant provisions of the settlement in this regard.

7. Ext. M-4 is part-V of the settlement which lays down the promotion policy and acting allowance. Ext. M-5 also deals with the special allowance and in paragraph 4, clause (b) it has been clearly stated that if a Clerk of any category is selected for acting duty in terms of the provision for acting allowance, he does not become entitled to claim to act in a vacancy, unless authorised by the Bank in writing, nor he shall have a claim for permanently holding the post on full-time vacancy and it has been stated that payment of special allowance is on pro-rata basis and from the evidence it becomes clear that Shri Karmakar was being deputed to act as Special Assistant in the Clearing Department from time to time by the Bank and he was being paid special allowance for the same, but subsequently, he was shifted to another post which he held till the end.

8. It is important to note in this connection that a petition was filed at the time of argument on behalf of the management stating therein that the workman concerned, Shri Dilip Kumar Karmakar had earlier applied for voluntary retirement in terms of the instruction circular dated 28-10-2000 and the Bank accepted his request. Accordingly, Shri Karmakar was released from service of the Bank on 17-3-2001 and therefore it has been submitted that since Shri Karmakar himself opted for taking voluntary retirement and accepted the terms and conditions of the Bank, he has no interest left in the present case. This appears to be consistent with his behaviour that when the two witnesses for the management were examined on 1st September, 2000 and another on 30-11-2000, no one

appeared even to cross-examine these witnesses. It is, therefore, absolutely clear that the workman accepted the policy of voluntary retirement and received the enhanced benefits under the scheme and his career now ended and therefore the entire claim on his behalf has become infructuous. Otherwise also, it is apparent from the provisions of the settlement that merely because a person continues to hold a post of higher responsibility on payment of special allowance, he does not become entitled to hold that post permanently, because filling up a vacancy in a particular grade or post has to be done according to the rules or policy for promotion.

9. In the result, it appears that there is no merit in this reference. The reference, therefore, is turned down and decided against the workman. The workman is not entitled to any relief as claimed.

Dated, Kolkata,

The 9th May, 2001.

B. P. SHARMA, Presiding Officer

नई दिल्ली, 21 मई, 2001

का.अ. 1325 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केन्द्र बैंक के प्रबंधन के संबंध में नियोज्जको और उनके कर्मचारों के बीच, शत्रुबंध से निदित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अम न्यायालय बंगलौर के पचाड को प्रकाशित काली है, जो के द्रीय सरकार को 21-5-2001 का प्राप्त हुआ था।

[स. एल-12012/138/99-आर्डी,आर (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 21st May, 2001

S.O. 1325.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Bangalore as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman which was received by the Central Government on 21-5-2001.

[No. 12012/138/99-IR(B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, BANGALORE

DATED : 15th May 2001

PRESENT:

Hon'ble Shri V. N. Kulkarni B.Com., LL.B.

C.R. No. 111/99

I Party

Shri G. Govindappa,
C/o Shri B. Gururaj,
Asstt. Secretary,
Canara Bank,
Contt. Br. Sudha, Cross
Bellary-580 101.

II Party

The General Manager,
Canara Bank,
Industrial Relations
Section, P&I Wing,
HQ, Bangalore-2.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12012/138/99/IR(B-II) dated 29th September 1999 for adjudication on the following schedule.

SCHEDULE

"Whether the action of the management of Canara Bank is justified in imposing the punishment of reduction to a lower stage in the time scale of pay by one stage for one year upon Shri C. Govindappa, Clerk? If not, what relief is the workman entitled to?"

1. Letter is sent by the Secretary of the First Party asking permission to withdraw the dispute. In view of this I pass the following order.

ORDER

Application is closed as withdrawn and dispute is disposed off.

(Dictated to PA transcribed by her corrected and signed by me on 15th May 2001).

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 21 मई, 2001

का.आ. 1326:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चण्डीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-01 को प्राप्त हुआ था।

[सं. एन-12012/173/93-आई आर (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 21st May, 2001

S.O. 1326.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Chandigarh as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 2-5-2001.

[No. L-12012/173/93-IR(B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI B. L. JATAV, PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
CHANDIGARH

Case No. ID 138/93

U. K. Chopra C/o
General Secretary,
Bank of Baroda Employees
Union, C/o Bank of Baroda
Gandhi Nagar,
Jammu

Workman.

Versus

Regional Manager,
Bank of Baroda,
Opp. Karan Park, G.T. Road,
Karnal

...Management

APPEARANCES :

For the workman : None.

For the management : Shri Pramod Jain.

AWARD

(Passed on 25th April, 2001)

The Central Govt. vide gazette notification No. L-12012/173/93-IR(3.2) dated 24th November 1993 has referred the following dispute to this Tribunal for adjudication:

"Whether the claim of Bank of Baroda Employees Union (NZ) Jammu that Shri U. K. Chopra is entitled for halting allowance for 125 days he worked at the Pathankot Branch is justified? If so, what relief is Shri Chopra entitled to?"

2. Today the case was fixed for evidence of the workman. Despite several notices none has put up appearance on behalf of the Union. It appears that Union is not interested to pursue with the present reference. In view of the situation, since no body is appearing on behalf of the Union, and union is not interested to pursue with the present reference, the present reference is returned to the Ministry for want of prosecution. Appropriate Govt. be informed.

Chandigarh.
25-4-2001.

B. L. JATAV, Presiding Officer

नई दिल्ली, 21 मई, 2001

का.आ. 1327:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चण्डीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-01 को प्राप्त हुआ था।

[सं. एन-12012/91/95-आई आर (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 21st May, 2001

नई दिल्ली, 21 मई, 2001

S.O. 1327.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Chandigarh as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 21-5-2001.

[No. L-12012|91|95-IR(B-II)]

AJAY KUMAR, Desk Officer
ANNEXURE

BEFORE SHRI B. L. JATAV, PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
CHANDIGARH

Case No. ID 75|95

Shri Munshi Singh son of
Shri Des Raj
V.P.O. Saharna, Distt. Mansa
Punjab,

...Workman.

Vs.

Regional Manager,
Central Bank of India,
Model Town, Delhi Road,
Rohtak, Haryana.

...Managemnt.

APPEARANCES:

For the workman : None.

For the management : Shri D. K. Chadha.

AWARD

(Passed on 2nd May, 2001)

The Central Govt. vide notification No. L-12012|91|95-IR (B-II) dated 25th of August, 1995 has referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Central Bank of India, Rohtak in terminating the services of Shri Munshi Singh, Armed Guard by treating him as having voluntarily retired from services w.e.f. 11-2-1993 is legal and justified? If not, what relief is the said workman entitled to?”

2. Today the case was fixed for filing of claim statement by the workman. None has put up appearances on behalf of the workman. The case is pending since 1995. No claim statement has been filed by the workman for the last six years. It appears that the workman is not interested to pursue with the present reference. In view of the situation, since no claim statement has been filed and none has put up appearances, the present reference is returned to the Ministry for want of prosecution. Appropriate Govt. be informed.

Chandigarh.
2-5-2001.

B. L. JATAV, Presiding Officer

का.आ. 1328.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधन के संबंध नियो-जकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/चंडीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[नं. एल-12012/104/97-आईआर (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 21st May, 2001

S.O. 1328.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Chandigarh as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 21-5-2001.

[No. L-12012|104|97-IR(B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI B. L. JATAV, PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
CHANDIGARH

Case No. I.D. 82 of 1998

Asst. General Secretary,
C.B.I. Employees' Union,
L-195, Model Town, Rohtak.

...Petitioner.

Vs.

The Regional Manager,
Central Bank of India,
Regional Office, Delhi Road
Rohtak.

...Respondent.

REPRESENTATIVES:

For the workman : None.

For the management : Sh. Shammi Kaplish.

AWARD

(Passed on 27th April, 2001)

The Central Govt. Ministry of Labour vide Notification No. L-12012|104|97|IR(B-II) dated 22nd April, 1998 has referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Central Bank of India in imposing the punishment of stoppage of two annual graded increments with cumulative effect on Sh. Bal Kishan, Clerk vide orders dt. 12-8-94 is legal and justified? If not, to what relief the said workman is entitled to?”

2. Today the case was fixed for evidence of the workman. None has put up appearance on behalf of the workman despite several notices. It appears that workman is not interested to pursue with the present reference. In view of the above, since the workman is not interested to the pursue with the present reference, the same is returned to the Ministry for want of prosecution. Appropriate Govt. be informed.

Chandigarh.
27-4-2001.

B. L. JATAV, Presiding Officer

नई दिल्ली, 21 मई, 2001

का.आ 1329.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[सं. एल-12011/25/2000-आई.आर. (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 21st May, 2001

S.O. 1329.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jaipur as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 21-5-2001.

[No. L-12011/25/2000-IR (B-II)]

AJAY KUMAR, Desk Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर प्रकरण संख्या सी. जी. आई. टी/31/2000

आदेश संख्या: एल-12011/25/2000/आई.आर. (बी-II) 16-6-2000 जनरल सेक्रेटरी, बैंक ऑफ बड़ौदा स्टाफ यूनियन द्वारा बैंक ऑफ बड़ौदा, उद्योग भवन, तिलक मार्ग, जयपुर (राजस्थान)।

प्रार्थी यूनियन

बनाम

जनरल मैनेजर, बैंक ऑफ बड़ौदा, आनन्द भवन, संसार चन्द्र रोड, जयपुर (राजस्थान)

प्रार्थी

उपस्थित :

प्रार्थी की ओर से

अप्रार्थी की ओर से

पंचाट दिनांक 20-3-2001

... कोई नहीं

... श्री श्याम व्यास

पंचाट

केन्द्रीय सरकार के द्वारा निम्न विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे बाद में अधिनियम, 1947 कहा गया है।) की धारा 10 की उपधारा-(1) के खण्ड-घ के प्रावधानों के अन्तर्गत उक्त आदेश को जरूर न्याय निर्णयन हेतु निर्देशित किया गया।

"Whether the action of the management of Bank of Baroda transferring the junior employees in alleged violation of policy guidelines issued by the Central office vide their circular No. COBR/71/357 dated 13-12-79 overlooking the claim of the same set of senior employees is justified? If not, what relief the union/workmen are entitled to?"

निर्देश आदेश दिनांक 27-7-2000 को प्राप्त हुआ, जिसके अनुसार जनरल सेक्रेटरी, बैंक ऑफ बड़ौदा स्टाफ यूनियन, राजस्थान (जिसे बाद में यूनियन कहा गया है।) को निर्देश आदेश की प्राप्ति के 15 दिन के अन्दर स्टेटमेंट ऑफ क्लेम प्रस्तुत करना था, परन्तु क्लेम प्रस्तुत नहीं किया गया। यूनियन के जार्वल सेक्रेटरी को क्लेम प्रस्तुत किए जाने हेतु नोटित किया गया, जिसे पर दिनांक 4-9-2000 को यूनियन की ओर से श्री सुरेश कश्यप ने अधिकार-पत्र व क्लेम प्रस्तुत किए जाने हेतु समय चाहा। इस पर दिनांक 3-10-2000 क्लेम प्रस्तुत किए जाने हेतु तारीख नियत की गई। दिनांक 3-10-2000 को भी क्लेम प्रस्तुत नहीं किया गया व क्लेम प्रस्तुत किए जाने हेतु समय चाहा गया। इस पर दिनांक 3-11-2000 तारीख नियत की गई। तत्पश्चात् दिनांक 4-12-2000, 5-1-2001, 31-1-2001, 5-3-2001 क्लेम प्रस्तुत किए जाने हेतु तारीख नियत की गई। दिनांक 5-3-2001 को अंतिम अवसर क्लेम प्रस्तुत किए जाने हेतु दिया गया था व दिनांक 9-3-2001 क्लेम प्रस्तुत किए जाने हेतु तारीख नियत की गई। दिनांक 9-3-2001 को श्री सुरेश कश्यप, अधिवक्ता का अधिकार-पत्र प्रस्तुत किया गया व क्लेम प्रस्तुत किए जाने हेतु एक और अवसर चाहा गया, जिस पर दिनांक 20-3-2001 क्लेम प्रस्तुत करने हेतु तारीख नियत की गई। दिनांक 20-3-2001 को भी न तो यूनियन के प्रतिनिधि उपस्थित हुए व न यूनियन का कोई पदाधिकारी उपस्थित हुआ व न क्लेम प्रस्तुत किया गया, जिससे ऐसा प्रकट होता है कि यूनियन को क्लेम प्रस्तुत किए जाने से कोई रुचि नहीं है। उक्त परिस्थितियों में विवाद रहित पंचाट पारित किया जाता है।

पंचाट की प्रतिलिपि केन्द्रीय सरकार को अधिनियम, 1947 की धारा 17 की उपधारा (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जाए।

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पीठाधीन अधिकारी

नई दिल्ली, 21 मई, 2001

का.आ. 1330—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेट्टल बैंक ऑफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[स. एल-12011/53/87-आई आर (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 21st May, 2001

S.O. 1330.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Chandigarh as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 21-5-2001.

[No. L-12011/53/87-IR(B-II)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI B. L. JATAV, PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
CHANDIGARH

Case No. ID 16/88

The General Secretary,
Central Bank of India Employees'
Union (Haryana), 129 Lal Kurti
Ambala Cantt.

.. Union.

Vs.

The Regional Manager,
Central Bank of India,
Regional Office, Model Town,
Rohtak.

2 The Regional Manager,
Central Bank of India,
106 Railway Road,
Ambala Cantt.

.. Management.

APPEARANCES:

For the Union : Shri B. S. Gill.

For the management : Shri Shammi Kaplish.

AWARD

(Passed on 18th April 2001)

The Central Govt. vide gazette notification No. L-12011/53/87-D II(A) dated 15th March 1988 has referred the following dispute to this Tribunal for adjudication:

"Whether the action of Central Bank of India, regions Rohtak and Ambala in supplying winter uniform to the subordinate staff once

in three years now is justified? If not to what relief the workmen concerned entitled and from what date?"

2. The case was fixed for evidence of the parties. The General Secretary of the Union appeared and filed an application stating that necessary steps have been taken by the management to supply uniform to the sub staff members and the grievance does not persist at present and the Union does not want to pursue with the present reference any further. In view of the above, since the grievance does not persists now, and the union does not want to pursue with the present reference, the reference is returned to the Ministry as settled. Appropriate Govt. be informed.

Chandigarh.

18-4-2001.

B. L. JATAV, Presiding Officer

नई दिल्ली, 21 मई, 2001

का.आ. 1331—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेट्टल बैंक ऑफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[स. एल-12012/1/91-आई आर (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 21st May, 2001

S.O. 1331.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Chandigarh as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 21-5-2001.

[No. L-12012/1/91-IR(B-II)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI B. L. JATAV, PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
CHANDIGARH

Case No. I.D. 44 of 1991

The General Secretary,
Central Bank of India Employees'
Union, 103, Palika Vihar,
Ambala City.

.. Petitioner.

Vs.

Regional Manager,
Central Bank of India
Ambala Cantt.

.. Respondent.

REPRESENTATIVES:

For the Workman : Workman in person.

For the Management : Shri Raj Kamal Dhiman
Asstt. Manager Zonal Office.

AWARD

(Passed on 23rd of April, 2001)

The Central Govt. Ministry of Labour vide Notification No. L-12012/1/91-I.R. B.2, dated 9th April 1991 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Central Bank of India in relation to their Kurukshetra Branch in imposing the penalty of stoppage of two annual graded increments on Sh. S. M. Sharma, Clerk is just and fair and legal ? If not, what relief the workman concerned is entitled to ?”

2. Case taken up today at the request of the parties. The workman appeared and filed an application stating therein that he does not want to pursue with the present reference and he is withdrawing the same without any pressure from anybody. In view of the above, the present reference is returned to the Ministry as withdrawn by the workman. Appropriate Govt. be informed.

Chandigarh.
23-4-2001.

B. L. JATAV, Presiding Officer

नई दिल्ली, 21 मई, 2001

का. आ. 1332.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नोर्दन रेलवे के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[सं. एल-41012/6/95-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 21st May, 2001

S.O. 1332.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Northern Railway and their workman, which was received by the Central Government on 21-5-2001.

[No. L-41012/62/95-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI B. L. JATAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Case No. ID 58/96

Shri Ashiq Ali son of Shri
B. R. Prabhakar, Kailash Nagar,
Model Town, Ambala.

.. Workman.

Vs.

Divisional Personnel Officer,
Northern Railway,
Ambala Cantt.

Management.

APPEARANCES :

For the workman : None.

For the management : Shri P. P. Khorana.

AWARD

(Passed on 2nd May 2001)

The Central Govt. vide notification No. L-41012/62/95-IR(B.I) dated 23rd of July 1996 has referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Northern Railway in terminating the service of Shri Ashiq Ali w.e.f. 11-12-1989 is just, fair and legal ? If not to what relief he is entitled and from what date ?”

2. Despite several notices none has put up appearance on behalf of the workman nor any claim has been filed by him since 1996. It appears that workman is not interested to pursue with the present reference. In view of the above, since no claim has been filed and no one is appearing on behalf of the workman, the present reference is returned to the Ministry for want of prosecution. Appropriate Govt. be informed.

Chandigarh.
2-5-2001.

B. L. JATAV, Presiding Officer

नई दिल्ली, 22 मई, 2001

का.आ. 1333.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तरी रेलवे के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[सं. एल-41012/9/92-आई आर (बी यू)/(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd May, 2001

S.O. 1333.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Northern Railway and their workman, which was received by the Central Government on 21-5-2001.

[No. L-41012/9/92-IR(DU)|(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI B. L. JATAV, PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
CHANDIGARH

Case No. ID 37/92

Shri Lachhman son of Shri Bachan
C/O B-17-F, Railway Colony
Ambala Cantt.

.. Workman

Vs.

Divisional Railway Manager,
Northern Railway,
Ambala (Haryana)

/Management

APPEARANCES :

For the workman : Nonc.

For the management : Shri P. P. Khorana.

AWARD

(Passed on 17th April 2001)

The Central Govt. vide Gazette notification No. L-41012/9/92/IR(DU) dated 8th April 1992 has referred the following dispute to this Tribunal for adjudication:

"Whether the action of Divisional Rly. Manager, N.R. Ambala Cantt. in terminating the services of Shri Lachhman son of Shri Bachan, Trolley Man under ASTE, Bhatinda vide order dt. 26-2-1991 is justified? If not, what relief he is entitled to?"

2. Case repeatedly called. None has put up appearances on behalf of the workman despite many notices. It appears that workman is not interested to pursue with the present reference. In view of the above, since the workman is not interested to pursue with his reference, the same is returned to the Ministry for prosecution. Appropriate Govt. be informed.

Chandigarh.
17-4-2001.

B. L. JATAV, Presiding Officer

नई दिल्ली, २२ मई, 2001

का.ग्रा. 1334.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पश्चिमी रेलवे, कोटा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अस न्यायालय, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[सं. एल-41012/32/89-डी 2(बी) आई/ग्रा (बी-1)]

अजय कुमार, डैक अधिकारी

New Delhi, the 22nd May, 2001

S.O. 1334.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of

the Central Government Industrial Tribunal/Labour Court, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Western Railway, Kota and their workmen, which was received by the Central Government on 21-5-2001.

[No. L-41012/32/89-D-2(B)/IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, JAIPUR

Case No. CGIT 75/2000

Reference No. L-41012/32/89 D 2(B) dt. 9-10-89

The Divisional Secretary,
Paschim Railway Karmachari Parishad,
Infront of Bank of Bikaner and Jaipur,
Kota Jn.

.. Applicant

Versus

The Divisional Railway Manager,
Western Railway, Kota.

.. Non-applicant

ATTENDANCE :

For the applicant.—Shri A. D. Grower.

For the non-applicant.—Shri T. P. Sharma.

Date of Award.—28-5-2001.

AWARD

The following dispute was referred for adjudication by the Central Government under clause (d) of sub-section (1) of section (10) of Industrial Disputes Act, 1947 (hereinafter referred as the Act, 1947) to the Central Government Industrial Tribunal, Delhi vide order No. L-41012/32/89-D-2-(B). Later on the above case was transferred to this Tribunal vide order No. L-4102/32/89/IRBI dt. 28th August, 2000 for adjudication.

The applicant filed the statement of claim stating that he was engaged as a hot weather water man by the Station Master Laban from 20-5-83 to 3-6-83 and on that basis he was engaged as a gangman by the PW1, Bhawanimandi on and from 21-6-84 and worked as such upto 20-5-85. He was not taken on duty on and from 21-5-85. He was directed to get his service card verified from the Station Master Laban and was told that he would be taken on duty on verification of service card but he was not taken on duty by PW1, Bhawanimandi even after verification of the card. He had already completed 240 days service during the year preceding to the date of termination but the provisions of Act, 1947 were not complied with by the non-applicant while terminating his services. It was prayed that the non-applicant be directed to reinstate him with all benefits.

The non-applicant in reply to the claim stated that initial engagement of the applicant could not be verified as the casual labour card is in possession of the applicant. It was stated that the applicant was appointed as casual labour by the PW-1, Bhawanimandi on 27-6-84 and not on 21-6-84. He absented himself from 11-5-85 at his own accord. It was denied that the applicant worked upto 20-5-85 and was not taken on duty on

21-5-85. It was also denied that the applicant was directed by the PWI to get the service card verified.

The applicant filed rejoinder to the reply reiterating the facts alleged in the statement of claim. It was also stated that although the applicant was engaged on 21-6-84 but he might have been taken on roll on 27-6-84 for the reason best known to PWI. It was denied that the applicant was not reported to duty from 11-5-85 at his own accord. It was also stated that he sent various representations under certificate of posting and regd. A.D. for taking him on duty.

On behalf of the applicant affidavits of Harimohan Yogi, the applicant and Salamuddin Gangman were filed. The representative of the non-applicant was given opportunity to cross examine them on their affidavits. In the form of documentary evidence copy of service card WI, copy of letter PWI, Bhawanimandi dt 19-7-85 Ex-W-2, copy of letter of DRM, Kota to ALC dt. 10-10-88 Ex-W-3 copy of minutes of conciliation proceedings, Ex-W-4, copy of statement of Girdhari and Tejsingh Ex-W-5 and 6 respectively, copies of certificates of posting marked A to G and copies of A.D. marked H to K were filed. On behalf of the non-applicant affidavit of P. K. Saxena PWI, Bhawanimandi was filed, the learned representative was given opportunity to cross examine him on his affidavit.

Heard arguments of the learned representative of the applicant Sri A. D. Grower and the learned advocate of the non-applicant Sri T. P. Sharma and perused the record. The following points arise for consideration :—

- (1) Whether the applicant had completed 240 days service under the non-applicant during the year preceding to the date of termination of his service w.e.f. 11-5-85.
- (2) Whether the applicant left the service on 11-5-85 at his own accord?
- (3) Whether service of the applicant was terminated in violation of section 25(F) of the Act, 1947?
- (4) To what relief the applicant is entitled?

The applicant in his statement has stated that he had worked as Gangman under PWI, Bhawanimandi from 21-6-84 to 20-5-85. No question has been put to him in cross examination regarding his above statement. In the letter dt. 10-10-88 addressed to ALC DRM has admitted that "applicant was engaged from 27-6-84 as a casual labour and had put in 102 days service. He absented from 24-10-84 to 29-10-84. Later on he started working from 30-10-84 and worked up to 6-3-85. He had worked for 103 days during this period. He again remained absent from 7-3-85 to 12-3-85 and worked for 38 days up to 10-5-85. According to him the applicant had worked during the period from 27-6-84 to 10-5-85 for a total period of 243 days. P. K. Saxena has stated his ignorance as to whether the applicant had completed 240 days service before the date of termination. Thus there is sufficient and reliable evidence on record that the applicant had worked for more than 240 days during the year preceding to the date of termination. It is thus proved

that the applicant had completed 240 days service during the year preceding to the date of termination of his service.

Point 2.—P. K. Saxena, PWI has stated that the applicant remained absent after 11-5-85. The applicant had presented himself for taking letter dated 19-7-85 alongwith service card which was given to him for service verification but thereafter he did not turn up for duty. He has stated that the service of applicant was not terminated. He has admitted that no notice was sent to him when he did not turn up after 11-5-85. On the other hand the applicant has stated that he was given the service card by PWI, Bhawanimandi for verification within a period of ten days i.e. during the period from 11-5-85 to 20-5-85 and his pay was drawn on 20-5-85 taking into consideration the anticipated period but subsequently he was marked absent during the period. He was not taken on duty by PWI, Bhawanimandi when he repeatedly went to him after getting the service card verified and was told by PWI that he would get it verified through post. He has further stated that certain other workmen were also given service card for verification during the above period and after verification they were taken on duty. On 19-7-85 after great persuasion he was given the service card for verification by the PWI. Even after verification of his service card he was not taken on duty. He has further stated that he had submitted many representations under certificate of posting marked A to G and regd. A.D. marked H to K, but with not result. His statement that service card was given to him for verification on 11-8-85 by PWI, Bhawanimandi and he was not taken on duty even after verification of service card by the PWI, finds support from the statement of Salamuddin, Gangman who was working under PWI, Bhawanimandi. The statements of applicant and Salamuddin could not be discredited during cross-examination. If the applicant might have left the service at his own accord, he would not have approached for verification of his service card from Station Master, Laban under whom he had worked and might not have sent representatives to the various authorities for taking him on duty. The contention of the non-applicant, therefore, that the applicant did not turn up for duty from 11-5-85 cannot be believed. On the contrary it is proved that the applicant was not taken on duty on 11-5-85 and thereafter.

Point 3 :—The applicant had completed more than 240 days service during the year preceding to the date of termination of his service. It is not disputed that no notice or pay-in-lieu of notice or retrenchment compensation was given to the applicant as required under Section 25(F) of the Act, 1947. It is thus proved that the applicant's services were terminated in violation of Section 25(F) of the Act, 1947.

Point 4 :—There is no evidence on record about the employment of the applicant after termination of service. The dispute was raised by applicant before the ALC in 1988 and more than 15 years have passed since the termination of the service of the applicant. In view of these circumstances the applicant will be entitled to reinstatement in service under the non-applicant with 50 per cent back wages and with continuity in service. The non-applicant will be free to

dispense with the service of applicant by complying the provisions of Section 25(F) of the Act, 1947.

The copies of the award may be sent to the Central Government for publication under Section 17(1) of the Act, 1947.

Sd./- Illegible.
Presiding Officer

नई दिल्ली, 22 मई, 2001

का.प्र. 1335—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल इंस्युरेन्स क.लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जापुर के पचाट की प्रकाशित करती है जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[स. एल-17012/34/99-आईआर (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd May, 2001

S.O. 1335.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jaipur as shown in the annexure in the Industrial Dispute between the employers in relation to the management of National Insurance Co. Ltd. and their workman, which was received by the Central Government on 21-5-2001.

[No. L-17012/34/99-IR(B-II)]

AJAY KUMAR, Desk Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जापुर प्रकरण संख्या सी.जी. आई. टी. 23/2000

हंसराज भार्गव पुत्र श्री छोटे लाल भार्गव विपुल घर के पास नागौर, राजस्थान हाल मार्फत प्रताप मिश्र मिरोही एडवोकेट, 82, इण्डिया, जापुर।

—प्रार्थी

बनाम

1. आच मैनेजर नेशनल इंस्युरेन्स कम्पनी लिमिटेड, नये दरवाजे के बाहर नागौर-341001.

2. नेशनल इंस्युरेन्स कम्पनी लिमिटेड, 3 मिडिल टन स्ट्रीट, कलकत्ता जॉर्ज प्रबन्धक निदेशक।

3. रीजनल मैनेजर नेशनल इंस्युरेन्स कम्पनी लिमिटेड, नागयण सिंह सक्लिन जापुर।

—अप्रार्थी/गण

उपस्थित :

प्रार्थी की ओर से

श्री सुरेश मिठावराल

अप्रार्थी की ओर से

श्री आर. के. जैन

पंचाट दिनांक 28-3-001

पंचाट

केन्द्रीय सरकार के द्वारा उक्त आदेश के जरिए निम्न विवाद औद्योगिक विवाद अधिनियम, 1947 (जिसे बाद में अधिनियम, 1917 कहा गया है) की धारा 10 की उपधारा (1) के खंड 6 के प्रावधानों के अन्तर्गत न्यायनिर्णयन हेतु निर्देशित किया गया—

“Whether the action of the management of National Insurance Company Limited, Jaipur in terminating the services of Sh. Hansraj Bhargava is legal and justified? If not, what relief is the disputant concerned entitled to?”

प्रार्थी की ओर से स्टेटमेंट ऑफ क्लेम प्रस्तुत किया गया, जिसमें उसके द्वारा उल्लेख किया गया कि उसकी नियुक्ति विपक्षी कम्पनी के शाखा कार्यालय, नागौर में बतौर दैनिक वेतन कर्मचारी दिनांक 13-2-84 को की गई थी जहां पर उसने चतुर्थ श्रेणी कर्मचारी का पूर्णकालिक कार्य लिया गया एवं 12 रुपये प्रतिदिन के हिसाब से उसे वेतन का भुगतान किया गया। उसने उक्त कार्यालय में दिनांक 15-1-86 तक लगातार कार्य किया और प्रत्येक कलेण्डर वर्ष में 240 दिन से अधिक कार्य किया। दिनांक 18/1/86 से मौखिक आदेश के द्वारा उसकी सेवाएं समाप्त कर दी गईं जबकि प्रार्थी से कनिष्ठ व्यक्ति सुन्दरलाल एवं बृजमोहन जिन्हें विपक्षी संस्थान में 1 जनवरी, 1986 में नियुक्त किया गया था, विपक्षी संस्थान में कार्यरत हैं। वर्ष 1990 के दौरान मदनलाल चौधरी नाथक व्यक्ति को प्रार्थी कम्पनी के नागौर स्थित कार्यालय में चतुर्थ श्रेणी कर्मचारी के पद पर नियुक्त किया गया। प्रार्थी की सेवा समाप्ति अधिनियम, 1947 की धारा 25-एफ, जी, एच एच का उल्लेखन कर की गई। सेवा समाप्ति के पश्चात् प्रार्थी विपक्षी कम्पनी के शाखा कार्यालय एवं क्षेत्रीय कार्यालय के अधिकारियों से मिला एवं उनसे उसे पुनः सेवा में लिया जाकर नियमित किए जाने की प्रार्थना की परन्तु विपक्षी संस्थान के द्वारा उसकी प्रार्थना पर कोई विचार नहीं किया गया। दिनांक 16-4-86 को कर्मचारियों की एसोशियेशन द्वारा प्रतिवेदन प्रस्तुत कर प्रार्थी को सेवा में रखने की मांग की गई परन्तु इस पर भी कोई निर्णय नहीं लिखा गया। इस पर प्रार्थी ने वर्ष 1991 में याचिका संख्या 6130/91 प्रस्तुत की, जिस पर माननीय उच्च न्यायालय ने प्रार्थी को औद्योगिक विवाद अधिनियम के तहत कार्यवाही किए जाने का निर्देश दिया गया। दिनांक 26/8/97 को सहायक श्रम आयुक्त के समक्ष प्रार्थी के द्वारा विवाद प्रार्थनापत्र प्रस्तुत कर उठाया गया, जिस पर विवाद प्रेषित करने से मना कर दिया गया। इस पर प्रार्थी के द्वारा रिट याचिका संख्या 741/2000 प्रस्तुत की गई, जो माननीय राजस्थान उच्च न्यायालय के द्वारा स्वीकार की गई एवं विवाद न्यायालय में प्रेषित करने हेतु निर्देशित किया गया, जिस पर यह विवाद केन्द्रीय सरकार के द्वारा निर्देशित किया गया है। प्रार्थना की गई कि प्रार्थी की सेवा/मुक्ति का आदेश दिनांक 18-1-1986 को अवैध एवं शून्य घोषित किया जाए व प्रार्थी को लगातार चतुर्थ श्रेणी कर्मचारी के पद पर माना जाकर उसे समस्त वेतन व लाभ दिलाए जाए।

विपक्षीगण की ओर से संयुक्त जवाब प्रस्तुत किया गया, जिसमें उल्लेख किया गया कि विपक्षी के द्वारा प्रार्थी को किसी पद पर नियुक्ति नहीं दी गई। प्रार्थी से पानी खाने व भरने का कार्य लिया गया था, जिसके लिए 12 रुपये प्रति दिन के हिसाब से उसे भुगतान किया जाता था। यह भी उल्लेख किया गया कि प्रार्थी को कभी भी कार्य से नहीं हटाया गया बल्कि वह स्वयं ही दिनांक 17-1-1986 के पश्चात् पानी खाने व भरने हेतु नहीं आया। इससे पूर्व भी वह कई बार स्वेच्छा से पानी खाने व भरने हेतु नहीं आता था। दिनांक 17/1/86 के पश्चात् प्रार्थी कभी भी अप्रार्थी बीमा कम्पनी के किसी कार्यालय एवं अधिकारी से नहीं मिला व न पुनः काम पर लेने की प्रार्थना की। प्रार्थी ने किसी भी वर्ष में 240 दिन कार्य नहीं किया। यह भी उल्लेख किया गया कि सुन्दर लाल, बृजमोहन, मदन लाल चौधरी की नियुक्ति निर्धारित अथवा प्रक्रिया अपनाने के पश्चात् नियमित रूप से की गई थी, अतः वे प्रार्थी से कनिष्ठ होता नहीं कहे जा सकते। अधिनियम, 1947 के प्रावधानों का उल्लंघन होने से भी इंकार किया गया।

प्रार्थी की ओर से जवाब का प्रत्युत्तर प्रस्तुत किया गया, जिसमें उसने स्टेटमेंट ऑफ क्लेम में उल्लेखित तथ्यों को दोहराया।

पक्षकारों के अभिकथनों के आधार पर निम्नांकित विवाद बिन्दु बनाए गए :—

- (1) आया प्रार्थी ने दिनांक 13-2-84 से 17-1-86 तक निरन्तर कार्य किया व सेवा समाप्ति से पूर्व के एक वर्ष में 240 दिन कार्य किया।
- (2) आया प्रार्थी दिनांक 17-1-86 से स्वेच्छा से कार्य पर नहीं आया ?
- (3) आया प्रार्थी विपक्षी संस्थान में पानी भरने व पानी खाने का कार्य करता था, जिसकी एवज में उसे 12 रुपये प्रतिदिन की दर से भुगतान किया जाता था व प्रार्थी अप्रार्थी के निर्देश पर कार्य नहीं करता था, यदि हां तो इसका प्रभाव ?
- (4) आया अप्रार्थी द्वारा प्रार्थी की भेदाभिमति औद्योगिक विवाद अधिनियम, 1947 की धारा 25-एफ एवं जी का उल्लंघन कर की गई ?
- (5) प्रार्थी किस सहायता को प्राप्त करने का अधिकारी है ?

प्रार्थी की ओर से क्लेम के समर्थन में स्वयं का शपथ-पत्र प्रस्तुत किया गया, जिस पर प्रतिपरीक्षा करने का अवसर विपक्षीगण के अधिवक्ता को दिया गया। प्रलेखीय साक्ष्य में प्रार्थी की ओर से प्रमाणपत्र प्रदर्श डब्ल्यू-1 जिसमें विपक्षी कम्पनी की शाखा नागौर के अफीसर इंचार्ज के द्वारा प्रार्थी के द्वारा सन् 1984 व 85 में 80 दिन दैनिक मजदूरी के आधार पर कार्य किए जाने का उल्लेख किया गया है, प्रस्तुत किया गया। उक्त प्रमाणपत्र दिनांक 10-12-1986 का है।

इसके अतिरिक्त प्रतिलिपि रिट याचिका संख्या 6130/91 प्रदर्श डब्ल्यू-2 प्रस्तुत की गई। विपक्षी की ओर से डा. एस. सी. कक्कड़ तत्कालीन सहायक शाखा, प्रबन्धक, नागौर का शपथपत्र प्रस्तुत किया गया, जिस पर प्रतिपरीक्षा करने का अवसर प्रार्थी के अधिवक्ता को दिया गया। प्रलेखीय साक्ष्य में प्रतिलिपि निर्देश आदेश प्रदर्श एम-1, प्रतिलिपि जवाब समझौता अधिकारी के समक्ष प्रदर्श एम-2 व प्रतिलिपि वाउचर प्रदर्श एम-3/1 से एम-3/30 प्रस्तुत किए गए।

बहस सुनी गई एवं पत्रावली का अवलोकन किया गया। बनाए गए विवाद बिन्दुओं निनिश्चय निम्न प्रकार किया जाता है :—

बिन्दु संख्या 1:—प्रार्थी का कथन है कि उसने विपक्षी कम्पनी की नागौर शाखा में दिनांक 13/2/84 से बतौर दैनिक वेतन भोगी कर्मचारी का कार्य किया। उससे पूर्णकालिक कार्य लिया गया व 12/- रुपये प्रतिदिन के हिसाब से भुगतान किया जाता था। उससे उक्त कार्यालय में दिनांक 17/1/86 तक लगातार कार्य किया व प्रत्येक वर्ष में 240 दिन से अधिक कार्य किया। उसने 10 दिसम्बर, 1986 को प्रमाणपत्र प्रदर्श डब्ल्यू-1 प्राप्त करना बताया है, जिसमें सन् 1984 व 85 में उसके द्वारा कुल 80 दिन कार्य किए जाने का उल्लेख है। अतः उसका यह कथन कि उसने प्रत्येक वर्ष में 240 दिन से अधिक कार्य किया, प्रमाणपत्र के आधार पर यह स्वीकार किए जाने योग्य नहीं है। दूसरी ओर एस. सी. कक्कड़ का कथन है कि वह दिनांक 8/11/85 से 16/3/87 तक नागौर स्थित शाखा में सहायक शाखा प्रबन्धक था। उससे पूर्व मांगीलाल मेहता, सहायक शाखा प्रबन्धक थे, जो सेवानिवृत्त हो चुके थे। प्रार्थी विपक्षी संस्थान की नागौर शाखा में 12/- रुपये प्रतिदिन के हिसाब से पानी खाने व भरने का कार्य करता था, जिस बाबत उसे 12/- रुपये प्रतिदिन की दर से भुगतान वाउचर के जरिए किया जाता था। भागवत की दिनांक 13/2/84 से 17/1/86 की अवधि में प्रदर्श एम-3/1 से एम-3/30 के भुगतान वाउचर के जरिए भुगतान किया गया। प्रार्थी ने किसी भी वर्ष में 240 दिन कार्य संपादित नहीं किया जैसा कि वाउचर प्रदर्श एम-3/1 से एम-3/30 से स्पष्ट प्रमाणित होता है। प्रार्थी द्वारा प्रस्तुत प्रमाणपत्र प्रदर्श डब्ल्यू-1 पर उसके हस्ताक्षर नहीं हैं व प्रमाणपत्र फर्जी है। उक्त प्रमाणपत्र में अफीसर इंचार्ज लिखा हुआ है जबकि सह सहायक प्रबन्धक था। प्रतिपरीक्षा में उसने कहा है कि प्रमाणपत्र प्रदर्श डब्ल्यू-1 पर शाखा के किसी भी कर्मचारी के हस्ताक्षर नहीं हैं। यह उल्लेख करना उचित होगा कि विपक्षी के द्वारा जो वाउचर प्रस्तुत किए गए हैं, उनके अनुसार प्रार्थी के द्वारा सन् 1984 में 121 दिन सन् 1985 में 144 दिन कार्य दिवसों के बाबत भुगतान किए जाने का उल्लेख है। प्रार्थी के विद्वान् अधिवक्ता स्वीकार करते हैं कि वाउचर के अनुसार प्रार्थी के कार्यदिवसों की उक्त गणना सही है। विपक्षी के द्वारा जब प्रार्थी से सन् 1984 एवं 85 में कुल 265 दिन कार्य लिया गया तो विपक्षी ऐसा प्रमाणपत्र "क्योंकर" देता कि प्रार्थी के द्वारा सन् 1984-सन् 85 में केवल 80 दिन ही कार्य किया गया। ऐसा

प्रतीत होता है कि प्रार्थी ने उक्त प्रमाणपत्र नहीं पढ़ा व उक्त प्रमाणपत्र की कूट रचना करा ली, जो विपक्षी संस्थान के किसी अधिकारी द्वारा जारी नहीं किया गया। यह उल्लेख करना उचित होगा कि प्रार्थी की ओर से विपक्षी से दस्तावेज तलब किए जाने हेतु एक आवेदन प्रस्तुत किया गया, जिस पर प्रार्थी के विद्वान अधिवक्ता के द्वारा इस कारण ओर नहीं दिया गया कि विपक्षी की ओर से वाउचर प्रस्तुत किए जा चुके हैं। विपक्षी के द्वारा जो वाउचर प्रस्तुत किए गए हैं उनके अनुसार प्रार्थी के द्वारा सन 1984 में 121 दिन, सन 1985 में 144 दिन व सन 1986 में 15 दिन कार्य किया जाना प्रमाणित होता है। यदि उक्त विवरणों में रविवार व राजपत्रित अवकाशों को भी सम्मिलित कर दिया जाए तो भी प्रार्थी का किसी भी वर्ष में व सेवा समाप्ति के पूर्व के 1 वर्ष में 240 दिन कार्य किया जाना प्रमाणित नहीं होता। प्रार्थी के द्वारा दिनांक 13/2/84 से 17/1/86 के बीच निरन्तर कार्य किया जाना प्रमाणित नहीं होता।

बिन्दु संख्या 2:— प्रार्थी का कथन है कि दिनांक 18/1/86 से मौखिक आदेश से उसकी सेवा समाप्त कर दी गई। उसका कथन है कि यह सेवा समाप्ति के पश्चात विपक्षी के शाखा कार्यालय व क्षेत्रीय कार्यालय के अधिकारियों से मिला व उसे पुनः सेवा में लिए जाने हेतु प्रार्थना की परन्तु उसकी प्रार्थना पर कोई विचार नहीं किया गया। उसका यह भी कथन है कि दिनांक 16/4/86 को कर्मचारियों की एसोसिएशन द्वारा भी उसे सेवा में रखने हेतु मांग की गई व प्रार्थी द्वारा पुनः एक प्रतिवेदन सेवा में लिए जाने हेतु विपक्षी कम्पनी को दिया गया। प्रतिपरीक्षा में उसका कथन है कि प्रार्थना पत्र लिखित में दिया गया था, परन्तु उसकी प्रतिलिपि अधि-कारण में प्रस्तुत नहीं की गई। कर्मचारी एसोसिएशन के द्वारा प्रार्थना पत्र दिए जाने बावत भी प्रार्थी की ओर से कोई प्रतिलिपि प्रस्तुत नहीं की गई। इस प्रकार प्रार्थी द्वारा या प्रार्थी की एसोसिएशन के द्वारा विपक्षी संस्थान में पुनः सेवा में लिए जाने हेतु आवेदन प्रस्तुत किया जाना प्रमाणित नहीं होता? विपक्षी के साक्षी एस. सी. कवकड का कथन है कि प्रार्थी दिनांक 17/1/86 के पश्चात से कार्य पर नहीं आया व न वह विपक्षी की नागौर शाखा में उससे मिला व न ही पानी लाने एवं भरने हेतु ताकीद की। उसका यह भी कथन है कि प्रार्थी को कभी सेवामुक्ति नहीं किया गया व वह कार्य को त्याग कर चला गया। प्रार्थी की सेवामुक्ति दिनांक 18/1/86 को बताई गई। प्रार्थी के द्वारा ऐसा कोई विश्व-सनीय कारण नहीं बताया गया कि रिट याचिका सन 1991 में प्रस्तुत करने से पूर्व उसने सेवामुक्ति के बावत कार्यवाही "क्योंकर" नहीं की। इससे यह निष्कर्ष निकलता है कि दिनांक 17/1/86 के पश्चात प्रार्थी कार्य पर स्वेच्छा से उपस्थित नहीं हुआ। यदि उसकी सेवा मौखिक आदेश से समाप्ति की जाती तो कोई कारण प्रतीत नहीं होता कि इतनी लम्बी अवधि तक सन 1986 से सन 1991 तक वह "क्योंकर" कोई कार्यवाही नहीं करता।

बिन्दु संख्या 3:— इस बारे में कोई विवाद नहीं है कि प्रार्थी विपक्षी संस्थान में पानी भरने व पानी लाने का कार्य 1709 GI/2001—6

करता था, जिसकी एवज में 12/- रुपये प्रतिदिन की दर से भुगतान किया जाता था। एस. सी. कवकड का कथन है कि प्रार्थी विपक्षी संस्थान के निर्देशों पर कार्य नहीं करता था। वह केवल पानी लाने व भरने का कार्य करता था, जिसके लिए विपक्षी के द्वारा उसे भुगतान किया जाता था। अतः प्रार्थी उक्त कारण से कर्मकार की श्रेणी में नहीं आता है। पानी भरने हेतु किसी विशेष निर्देश की आवश्यकता होती है, ऐसा नहीं कहा जा सकता व इस कारण से प्रार्थी के कर्मकार होने के बावत कोई प्रभाव नहीं पड़ता।

बिन्दु संख्या 4:— प्रार्थी की ओर से यह प्रमाणित नहीं है कि प्रार्थी की सेवा अप्रार्थी के द्वारा समाप्त की गई। इसके विपरीत यह प्रमाणित है कि प्रार्थी स्वयं दिनांक 17/1/86 से कार्य पर उपस्थित नहीं हुआ। इसके अतिरिक्त प्रार्थी की ओर से यह भी प्रमाणित नहीं है कि उसने दिनांक 13/2/84 से 17/1/86 तक विपक्षी संस्थान में निरन्तर कार्य किया अथवा उक्त अवधि में किसी भी वर्ष में 240 दिन कार्य किया अथवा तथा कथित सेवा समाप्ति की दिनांक 18/1/86 के पूर्व के एक वर्ष भी अवधि में 240 दिन कार्य किया। इस कारण से भी अधिनियम 1947 की धारा 25-एफ के प्रावधान आकृष्ट नहीं होते। प्रार्थी स्वयं ने स्वीकार किया है कि सुन्दर लाल, बृजमोहन, मदन लाल चौधरी को नियुक्ति निर्धारित प्रक्रिया के तहत साक्षात्कार के पश्चात की गई है। प्रार्थी वैनिक वेतन मजदूरी पर कार्यरत था, जबकि उक्त व्यक्तियों की नियुक्ति निर्धारित प्रक्रिया के तहत की गई है, अतः प्रार्थी की तुलना उक्त व्यक्तियों से नहीं की जा सकती। वैसे भी प्रार्थी की सेवा समाप्ति छंटनी के तहत नहीं आती अर्थात् अधिनियम, 1947 की धारा 5-एफ, जी एवं एच, के प्रावधान आकृष्ट नहीं होते।

बिन्दु संख्या 5:— उक्त बिन्दुओं के विनिश्चय के आधार पर प्रार्थी की सेवा समाप्त अनुचित अवधि होना नहीं पाया जाता व प्रार्थी कोई सहायता प्राप्त करने का अधिकारी नहीं है।

पंचाट की प्रतिलिपि केन्द्रीय सरकार को अधिनियम, 1947 की धारा 17 की उपधारा (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जाए।

हु०/-

पीठासीन अधिकारी

नई दिल्ली, 22 मई, 2001

का. आ. 1336.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केन्द्र बैंक के प्रबन्धतंत्र के संबंध निोजकों और उनके कर्मकारों बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-5-2001 को प्राप्त हुआ था।

[सं. एल-12012/55/97—आई धार (बी-II)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd May, 2001

S.O. 1336.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal New Delhi as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 22-5-2001.

[No. L-12012/55/97-IR(B-II)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI K. S. SRIVASTAV, PRESIDING
OFFICER CENTRAL GOVT. INDUSTRIAL
TRIBUNAL, NEW DELHI

I.D. No. 114/98

In the matter of dispute between—

Shri Ishwar Singh Clerk,
through The Asstt. General Secretary,
Haryana Bank Employees Federation,
House No. 83, Nehru Nagar,
Panipat

Versus

The Deputy General Manager,
Canara Bank, S.C.O. 8084
Circle Office, Sector 34-A
Chandigarh.

APPEARANCES:

Shri Ishwar Singh workman in person.

None—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its order No. L-12012/55/97/IR(B-II) dated 8/12-05-98 has sent this reference under Section 10(1)(d) and Section 2-A of Industrial Disputes Act, 1947 for adjudication of Industrial Dispute on the following terms:—

“Whether the action of the management of Canara Bank in imposing punishment of stoppage of one increment with cumulative effect on Shri Ishwar Singh, Clerk vide orders dated 28-8-91 is just and legal? If not to what relief is the workman entitled to?”

2. Statement of claim and written statement have been exchanged between the parties.

3. On the pleadings of the parties it is found that the workman was initially employed as Cashier-cum-Godown Keeper on 18-1-77 in the erstwhile Lakshmi Commercial Bank which bank later on amalgamated with Canara Bank vide notification dated 23-8-81 issued by the Government of India.

4. The workman case in nut shell is that his service record was always found very good. That unfortunately a junior employee to him was promoted over and above him and he had to file a writ petition No. 7973/1989 in the Hon'ble Punjab & Haryana High Court which was decided on 18-4-90 and the junior person was demoted. The Management of the Canara Bank had become displeased with the Act of the workman

for filing writ petition before the Hon'ble High Court of Punjab and Haryana thus the workman was transferred maliciously by the Management against which the workman had filed Contempt Petition No. 979 of 1989 in the Hon'ble High Court of Punjab and Haryana but he had withdrawn it on 24-11-89.

5. The workman's case is that Management had become very much sure with the workman and in order to victimise and punish him he was served with the charge sheet alleging about his misconduct to the effect that he had wilfully slowed down his work and he was in the habit of coming late in the office and leaving the office much before the closing time of the office.

6. The workman's case again is that the disciplinary proceeding against him was not conducted in accordance with the law and he was not given opportunity of proper bearing. However, the enquiry officer had suggested the punishment of only giving warning to him but the punishing authority ignoring the suggestion of the enquiry officer imposed punishment of stoppage of one increment of the workman with cumulative effect. Appellate authority before whom appeal was filed against punishment order also did not give opportunity of proper hearing and his appeal was dismissed illegally.

7. The Management Bank has denied the workman's case that the punishment to the workman was given with a view to victimise him and has asserted that punishment to the workman was properly given after holding a proper enquiry against him. The Bank has stated the enquiry against the workman was held in a legal manner and he was given opportunity. The Bank has, however, taken the plea of the reference being invalid on the ground that workman's case has not been properly espoused and thus there was no industrial dispute as defined in Section 2(K) of the Act. The Management has also taken the plea that the workman case is highly belated Punishment was imposed the order of 1991 and the reference was made in the year 1998.

8. On behalf of the Bank evidence has been led and affidavit of Shri S. K. Sharma, Presiding Officer of the departmental enquiry has been given. He has also been cross-examined. He has proved his affidavit marked as MW1/1.

9. It appears that in the meantime vide order dated 31-8-2000 case was proceeded ex parte against the workman. The application for setting aside ex parte order given by the workman was pending for disposal and before disposal of the said application the workman has filed this application dated 30-4-2001, praying for the withdrawal of his case. It is not objected by the Bank vide endorsement made on the application, on behalf of the Bank.

10. In view of the fact that the petitioner has failed to adduce evidence in the case and has allowed his case to be proceeded ex parte and thereafter filed the said application for withdrawing the case. I find that the terms of reference should be decided in affirmative and in favour of the Bank. The workman is not entitled for any relief in his favour. The Award in the case is thus given in the like manner.

DATED : 18th May 2001

K. S. SRIVASTAV, Presiding Officer

नई दिल्ली, 22 मई, 2001

का. आ. 1337—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार न्यू बैंक ऑफ इण्डिया के प्रबन्धन के अवध नियोजकों और उनके कर्मकारों के बीच, अनुवध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-5-2001 को प्राप्त हुआ था।

[च. एल-12012/217/90-आई आर (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd May, 2001

S.O. 1337.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the annexure in the Industrial Dispute between the employers in relation to the management of New Bank of India and their workman, which was received by the Central Government on 22-5-2001.

[No. L-12012/217/90-IR(B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI K. S. SRIVASTAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 144/90

In the matter of dispute between :

Shri R. B. Mall through
General Secretary,
New Bank of India Staff Union (Delhi)
Registered 9-A, Connaught Place,
First Floor,
Union Office,
New Delhi-110001.

Versus

General Manager,
New Bank of India,
1, Tolstoy Marg,
New Delhi-110001.

APPEARANCES :

Shri T. C. Gupta—for the workman.

Shri N. C. Sikri with Miss Geetanjali Goel—for the management.

AWARD

Being aggrieved by the order of transfer dated 20-9-89 passed against the workman namely Shri R. B. Mall an employee of the New Bank of India, New Delhi transferring him from New Delhi to Meerut. The New Bank of India Staff Union Delhi took up the workman's cause and raised an Industrial dispute. The reconciliation proceedings held but could not succeed.

2. Thus this reference under section 10(1)(d) and 2A of the I.D. Act, 1947 has been sent to this Tribunal by the Central Government in the Ministry of Labour vide its Order No. L-12012/217/90-I.R.(B-2)

dated 3-12-90 for adjudication of the dispute on the following terms :—

"Whether the action of the Management of New Bank of India, in transferring Shri R. B. Mall Clerk-cum-Godown Keeper from its Asaf Ali Road Branch to its Regional Office at Meerut during the pendency of departmental enquiry against him at Delhi is justified? If not to what relief the workman is entitled?"

3. It is important to note that during the continuance of the proceeding and after exchange of the Statement of Claim, W.S. Rejoinder the New Bank of India was amalgamated with Punjab National Bank and on the application dt. 18-10-93 moved on behalf of the workman Punjab National Bank was impleaded opposite party in place of New Bank of India vide order dated 10-1-94. No change of any sort in the pleadings of the parties could be made and it remained same.

4. The averments made on behalf of the workman in short is that the workman was employed as a clerk-cum-godown keeper in New Bank of India through Banking Service Recruitment Board Delhi and after his selection his name was forwarded for his appointment in the New Bank of India at Delhi and the workman had accordingly reported for duty in the Regional Office at New Bank of India, Delhi from where he was posted at A Block, Connaught Place, New Delhi Branch of the Bank w.e.f. 22-3-82. It is further averred that soon after joining his service the workman had become an active member of the Union which was not liked by the management of New Bank of India and it started treating the workman with hostility, and victimisation. The workman was subjected to frequent indiscriminate and unwarranted transfers from one branch to another without considering the period of stay at particular branch or distances of the transferee branch from the place of his residence and in violation of the guidelines of the bank and government directives. In fact within a period of six years from the date of his employment the workman was transferred from one branch to the another branch in the following branches :

1. After his posting at A Block Connaught Place, New Delhi branch of the Bank after little over one year he was transferred from there to Inderpuri Branch.
2. Secondly then in the month of September, 1987 he was transferred from Inderpuri Branch to the paid off rural branch i.e. Dera near Mehrauli. Thereafter within three months of its posting at Dera Branch he was transferred to Haus Khas branch on deputation for three months and was again transferred from there to Asaf Ali Road Branch of the bank on deputation from where he was abruptly transferred to Meerut Region under the impugned order of transfer.

5. The Management of New Bank of India was not satisfied with these frequent transfers of the workman and only to cause harassment and victimise him he

was placed under suspension on 10-8-88 on a trumped up charge. The copy of the order of suspension is annexure W-3 of the Statement of Claim.

6. It is again averred on behalf of the workman that the Management had failed to proceed with the enquiry against the workman and the enquiry proceeding was highly delayed. Although the enquiry proceeding had commenced on 27-5-89 but till then no charge sheet was served on the workman, and after bringing this fact to the notice of the authorities by the workman the enquiry proceeding was then adjourned and it was again resumed sometimes in the month of June, 1982 and it was again adjourned by the enquiry officer and thereafter it never assumed and ultimately vide order dated 20-9-89 the suspension of the workman was revoked and he was reinstated in service but at the same time he was transferred and directed to report on duty in the Regional Office of the New Bank of India at Meerut. This order according to the workman was passed by the Regional Manager Delhi copy of which has been filed as Annexure W-4. Again the workman was further harassed to the effect that his salary from 1-7-88 to 9-8-88 was withheld without any valid reason and it was released only in the month of January, 1989. Even the subsistence allowance was not paid and was withheld for long period causing a great hardship to the workman. The subsistence allowance from 10-8-88 to 31-12-88 was released on 6-1-89. The workman was not paid his subsistence allowance at all for the month of April, 1989 and the subsistence allowance for the month of July to September, 1989 was released on 13-10-89. It is again averred that evidently after receipt of the said transfer order dated 20-9-89 workman had lodged a detailed protest against it vide his letter dated 27-9-89 copy of which is annexure W-5 of the statement of claim and when the Management of the New Bank of India had failed to revoke the said transfer order his case was taken up by the New Bank of India Staff Union. The conciliation proceeding held after raising industrial dispute by the New Bank of India could not succeed.

7. The order of transfer has been assailed on behalf of the workman on the following grounds :—

1. Order of transfer is violative of the bank's circulars dated 22-4-81 and 7-5-87. The copies of both these circulars have been filed by the workman as annexure W-1 and annexure W-2 respectively of the statement of claim.

Secondly the order of transfer has been padded by incompetent authority of the Bank. The contention of the workman is that the Regional Manager was not competent to pass the order of transfer from one Region to another and since workman was transferred from Delhi to Meerut in the other Region he was incompetent to pass such an order. Thirdly order of transfer was not passed on any ground of administrative or service exigencies of the Bank but was passed in a colourable exercise of power with mala fide intention only to cause harassment to the workman. Fourthly, the order of transfer amounts to unfair labour

practice as provided under Schedule V of the Act.

8. The workman's case has been contested by the New Bank of India (hereinafter referred to as Bank) and it is stated that the dispute raised by New Bank of India Staff Union is misconceived and untenable. The Union has no locus standi to raise the dispute. The bank has asserted that the transfer an incidence of service and it is open to the employer to transfer a person from one place to another keeping in view the exigencies of his service. The bank had in no way acted in mala fide manner to transfer the workman on administrative exigencies from Delhi to Meerut which was within the same language area. The transfer of the workman according to the bank was administrative transfer and no request from him was required to have been taken. The bank has denied that the workman's transfer was in any manner punitive. The Bank has stated that as per para 536 of the Sastry Award and the Bipartite Settlement an employee could be transferred in the same language area and thus by transferring the workman from Delhi to Meerut none of the provisions of the Sastry Award and Bipartite Settlements have been contravened. The Bank assertion again is that the workman in fact was reinstated in the service after the revocation of his suspension order thus there was no service condition that the workman could be posted in the same region on reinstatement.

9. As regards the workman's allegation of the transfer order being violative of circulars dated 22-4-87 and 7-5-87 the bank has asserted that these circulars merely lay down guidelines and are not mandatory in nature. Its exigencies of service is paramount consideration for transfer and said guidelines do not create any right in favour of an employee.

10. The Bank has denied the workman's averment regarding his harassment by withholding his salary for 1-7-88 to 9-8-88 and also about the irregular payment and non-payment of subsistence allowance. Bank has asserted that the salary for the said period was released in January, 1989 with a view to keep harmonious relations with the workman. The bank has again denied the workman's allegation of the illegality of the order of transfer on the ground of incompetency of the authority and has stated that Deputy General Manager who had passed order of transfer was competent enough to pass such an order.

11. The Bank has however, not denied the workman's allegation regarding the disciplinary proceeding initiated and closed against him but it has asserted that the enquiry proceeding was being delayed by the workman himself. The disciplinary authority according to the bank had reviewed matter and had decided to revoke suspension of the workman and also to reinstatement. The bank has again denied the workman's allegation regarding his frequent transfers to the other branches of the Bank and has asserted that all these proceedings were made in a routine manner excepting when workman was posted on deputation basis and there was no illegality in such transfer and in no manner it can be considered as victimisation of the workman. The Bank has prayed for the rejection of the workman's claim.

12. In the rejoinder filed by the workman the allegations made in the statement of claim have mostly been reiterated asserting about his victimisation and harassment.

13. Both the parties have led evidence in the case. On behalf of the workman affidavit of Shri R. B. Mall the workman has been given in evidence and he has been cross-examined on behalf of the Bank. The affidavit filed by the workman has been marked as Ex. WW1/1. In his affidavit the workman has supported the allegations made in the statement of claim.

14. On behalf of the Bank the affidavit of Shri M. S. Rekhi, Deputy Chief (Personnel) has been filed. He has also been cross-examined on behalf of the workman. His affidavit has been marked as MW1/1. He has supported Bank's case.

15. Arguments on behalf of the parties heard. In the case of Syndicate Bank Limited Vs. workmen 1964 LLJ Page 440 (Supreme Court) Hon'ble Supreme Court of India while discussing with the subject on the validity of the order of transfer of the bank transferring its employee at the first instance has given a caution to the Industrial Tribunals that it should be very careful before interfering with the orders of the Bank transferring its employees in the discharge of their managerial functions. In the said case the employee who was clerk of the Syndicate Bank and was posted in Vijay Bank Branch was transferred from Vijay Wara to Bangan Palli on the same scale of pay and allowances. A dispute was raised with respect of the reference to the said order of transfer. The order of transfer was not found proper and legal by the Tribunal concerned on the ground of mala fide order of the Tribunal was set aside.

16. The relevant observations made by the Hon'ble Supreme Court in this respect is quoted below :—

"Held, there is no doubt that the banks are entitled to decide on a consideration of the necessities of Banking Business whether the transfer of an employee should be made to a particular branch. There is also no doubt that the management is in the best position to judge how to distribute its employees between the different branches. We are, therefore, of opinion that the industrial tribunals should be very careful before they interfere with the orders made by the banks in the discharge of their managerial functions. It is true that if an order of transfer is made mala fide or for some ulterior purpose like punishing an employee for his trade union activities, the industrial tribunals should interfere and set aside such an order, because the mala fide exercise of power is not considered legal exercise of the power. But the finding of mala fides should be reached by industrial tribunals only if there is sufficient and proper evidence in support of the finding. Such a finding should not be reached capriciously or on flimsy grounds as the industrial tribunal has done in this case."

Again in the case of Canara Banking Corporation Vs. U. Vital—1963(2) LLJ. 354 SC has considered the provisions of the Sastry Award in regard to the trans-

fers of the staff other than subordinate staff, considered and explained and found that the transfer of the clerks of the Bank outside the State or the language areas in which he was serving without his consent was not in any manner affected by the Sastry Award.

17. Both these authorities I find is the complete reply of the contentions of the workman about the illegality of the order of transfer made in the case and mentioned above.

18. However, I have further studied the following authorities cited on behalf of the workman :

1. E. P. Noyappa Vs. State of Tamil Nadu (1974 Lab. I. Cases 427) in para 86 at pages 456-457.
2. In K. C. Lakshmikutty Vs. State of Kerala (1990 Lab. I. C. N. O. C. 51)
3. In P. V. S. Murthy Vs. Chief Manager, State Bank of India (1990 Lab. I. C. NOC 110).
4. Dr. P. Damodaran Vs. State of Kerala 1982 Lab. I. Cases 251) Para 11 at page 254.

In all these authorities it has merely been heard that the power to transfer should be exercised reasonably and fairly and in the best interest of the Administration and where the power exercised without due regard to the interest of administration or the interest of the public or the provisions of law or the requirements of justice or power is exercised for extraneous and irrelevant consideration or for mala fide reasons or as a punishment and victimisation. The order of transfer cannot be held as legal and justified.

19. Thus the mala fide of the authority in passing transfer orders is the paramount consideration for holding it invalid and illegal.

20. It is undoubtedly true that person alleging mala fide should prove it by cogent and reliable evidence.

21. In the present case the instance of mala fides of the management of the Bank in passing the transfer order has been given to the effect only that the workman's activities of the Union was not appreciated by the Management and it had become hostile to him and with this view workman was being transferred from one branch to another branch successively and without taking into consideration all his stay in the branch of the Bank. According to the workman these transfers were affected within short period of six years from the date of his joining service i.e. 22-3-82. Its details have been given above. The workman's contention in this respect also is that he was got involved by the Bank in the false charge of misconduct and was suspended and thereafter departmental enquiry was initiated, but could not be continued and ultimately his suspension order was revoked and he was reinstated and thereafter only to cause harassment to him he was transferred to Meerut during the pendency of the enquiry.

22. After having considered the entire facts and circumstances of the case none of these contentions of the workman I find as satisfactory. The Bank has denied that the aforesaid transfers of the workman

was made either to cause him harassment or to victimise him but according to it these transfers were routine transfers and sometimes the workman was sent on deputation, Shri M. S. Rekhi MW1 has stated it in his affidavit. He has not been effectively cross-examined, on behalf of the workman. The evidence of Mr. M. S. Rekhi in this respect I find is satisfactory and reliable. However, on the own showing of the workman he had joined in the bank on 22-3-82 in the branch office of A block, Connaught Place, New Delhi and from there he was transferred to Inder Puri Branch No doubt for little over one year but thereafter he remained there upto the year 1987 and it was only for the year September, 1987. He was again transferred from there and thereafter he was transferred to Dera Branch and from there he was again transferred to the branch office of the Bank at Haus Khas New Delhi. These transfers I do not find that it could be said to be mala fide or to have been effected only to victimise the workman. The workman's contentions made in this respect thus I find cannot be accepted. The workman's next contention that order of transfer was passed in violation of the circulars dated 22-4-81 and 7-5-87 and invalid after having considered these circulars I find also has got no force. I agree with the contention of the bank that the transfer is an instance of the service conditions and the employer was entitled to transfer an employee from one place to another keeping in view the exigencies of service. As seen above order of the transfer can be interfered with only when there is any mala fide in such an order. I do not agree with the workman's contention that he was transferred from New Delhi to Meerut pending departmental enquiry. Admittedly the enquiry against the workman was dropped by the disciplinary authority and his suspension order was revoked and he was reinstated in service after the revocation of the suspension order and his reinstatement in service. It will be hard to say that the enquiry against the workman was still pending workman's contention is rejected.

23. The contention of the workman that he could not have been transferred from one region to another I find has also got no force. It is definite case of the bank that in view of the para 536 of the Sastry award the employees can be transferred within the same language area. In the case of Carana Banking Corporation Limited Vs. Vittal (U) Supra the Hon'ble Supreme Court of India has held such transfers as proper and valid. This contention of the workman also cannot be accepted.

24. Now coming to the workman's next contention of the incompetency of the authority to pass the transfer order. In paragraph 9 of the statement of claim it is stated that the order dated 20-9-89 was passed by the Regional Manager, and to this effect the suggestion was given on behalf of the workman to Mr. M. S. Rekhi MW1 in his cross-examination. A perusal of the cross-examination of M. S. Rekhi shows that he has stated "It is correct that the Regional Manager is not empowered to transfer an employee from one Region to another Region". The order of transfer on 20-9-79 undisputedly has not been passed by the Regional Manager. It has been passed by the Deputy Chief Manager of the Bank. In view of the fact I find difficult to accept that the Dy. Chief

Manager of the Bank who has passed the order of transfer of the workman has no authority. True it is that in para 11 'G' it is mentioned that the Deputy General Manager of the disciplinary authority of Delhi Region had passed the order of transfer but in view of the aforesaid fact I do not find that this averment of the workman in any manner can prove this case. The workman's contention made in this respect is also rejected.

25. As regards workman's contention of unfair labour practice in passing the order of transfer from Delhi to Meerut I find the workman has miserably failed to establish his case in this respect. In the case presently this Tribunal has been called upon to adjudicate upon the action of the Management of the New Bank of India in transferring the workman from Delhi to Meerut during the pendency of the departmental enquiry the terms of reference does not speak about the unfair labour practice of the management of the bank in transferring the workman from Delhi to Meerut. Hence in my view the workman's contention cannot be accepted. Further more in class VII of the Vth Schedule of the Act the transfer of the workman in a mala fide manner from one place to another under the guise of following management policy is provided is unfair labour practice. The workman has failed to establish the said aspect of unfair labour practice. The general allegation of unfair labour practice made by the workman without any specification I find cannot be accepted.

26. In view of the discussions made above I find that the action of the management of the Bank in transferring the workman from Asaf Ali Road Branch, Delhi to its Regional Office at Meerut cannot be said as unjustified. The term of the reference is thus answered in affirmative and the award in the case is given in the like terms.

Dated : May 18, 2001.

K. S. SRIVASTAV, Presiding Officer

नई दिल्ली, 22 मई, 2001

का. प्रा. 1388.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ़ बीकानेर एंड जयपुर के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण /श्रम न्यायालय जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार की 21-5-2001 को प्राप्त हुआ था।

[सं. एल-12-12/508/98-आई प्रार (बी-1)]
अजय कुमार, हेड ऑफ़ अधिकारी

New Delhi, the 22nd May, 2001

S.O. 1338.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government

Industrial Tribunal/Labour Court, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Bikaner & Jaipur and their workman, which was received by the Central Government on 21-5-2001.

[No.L-12012/508/98 IR(B-I)]
AJAY KUMAR, Desk Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय,
जयपुर ।

प्रकरण संख्या :—सी.जी.आई.टी./जे-14/99

आदेश संख्या :—एल-12012/508/98-आई. आर.
(बी-1) 22-3-99

अध्यक्ष आल बैंक सहाई कर्मचारी संघ, राजस्थान, सेट्टल
बैंक ऑफ इण्डिया, आकाशवाणी के पास, एम. आई. रोड,
जयपुर ।

—प्राथम्य संघ

वतम

जनरल मैनेजर (पर्सनल) स्टेट बैंक ऑफ बीकानेर एण्ड
जयपुर, प्रधान कार्यालय, शिवाजी मार्ग, जयपुर ।

—अप्राथी

उपस्थित :—

प्राथम्य की ओर से श्री कान्तिराव राठोड़

अप्राथी की ओर से श्री एन. सी. गोधन

पंचाट दिनांक 8-3-2001

पंचाट

केन्द्र सरकार के द्वारा निम्न विवाद उक्त आवेश के
जुरिए औद्योगिक विवाद अधिनियम, 1947 (जिसे बाद में
अधिनियम, 1947 कहा गया है ।) की धारा 10 की उपधारा
(1) के खण्ड-घ के प्रावधानों के अन्तर्गत न्यायनिर्णयन
हेतु निर्देशित किया गया है :—

“Whether the action of the Management not
giving appointment on full time scale
wages to Smt. Sushila Devi is justified,
whereas her Junior employees are already
appointed on full time scale wages. If
not, what relief to Smt. Sushila Devi is
entitled for?”

पूनिन की ओर से आल बैंक सहाई कर्मचारी संघ
(जिसे बाद में संघ कहा गया है ।) के अध्यक्ष के द्वारा
स्टेटमेंट ऑफ क्लेम प्रस्तुत किया गया, जिसमें उल्लेख किया
गया कि संघ एक मान्यता प्राप्त संघ है । विपक्षी बैंक में
कार्य करने वाले अधिकांशतः अंशकालीन सहाई कर्मचारी संघ
के सदस्य हैं तथा श्रमिका सुशीला देवी (जिसे बाद में
श्रमिका कहा गया है ।) भी संघ की सदस्या है । श्रमिका
स्टेट बैंक ऑफ बीकानेर एण्ड जयपुर (जिसे बाद में बैंक
कहा गया है ।) के द्वारा दिनांक 1-8-81 से बैंक परिसर की
सहाई का कार्य करने के लिए अंशकालीन सहाई कर्मचारी के

पद पर नियुक्ति दी गई व तभी से वह लगातार मेहनत व
ईमानदारी से कार्य करती आ रही है । उससे प्रातः 7.00
बजे से 11.00 बजे व सांय 2.00 बजे से 4.00 बजे
तक कुल 6 घण्टे कार्य लिया जाता है, अतः वह पूर्णकालिक
श्रमिका की श्रेणी में आती है । उसने बैंक में कार्य के अनुसार
पूर्ण वेतन का भुगतान किए जाने हेतु क्षेत्रीय प्रबन्धक, जयपुर
अंचल को दिनांक 20-3-87 को लिखित में प्रार्थना-पत्र
देकर भी पूर्ण वेतन व स्थाई करने की मांग की । उसने
पुनः दिनांक 16/4/87 को पत्र देकर पूर्ण वेतन व स्थाई
नियुक्ति हेतु निवेदन किया । तत्पश्चात् उसने दिनांक
24-5-87 को बैंक को आवेदन किया कि उससे कनिष्ठ
श्रमिकों को पूर्ण वेतनमान का भुगतान किया जा रहा है,
जबकि उससे बरिष्ठतम श्रमिका होने के कारण भी उसे
स्थाई नहीं किया गया व न ही पूर्ण वेतनमान के अनुसार
भुगतान किया गया, परन्तु बैंक ने कोई सुनवाई नहीं की ।
यह भी उल्लेख किया गया कि श्रमिका से कनिष्ठ भद्रेश
बैंक की शाखा बाबूनगर, भद्रेश कुमार, मिशनरी शाखा
व कन्हैयालाल, एस. एम. एस. शाखा, जयपुर को पूर्ण
वेतनमान पर नियुक्ति दी गई है व इससे पूर्व भी श्रमिका से
कनिष्ठ कामगार सत्यनारायण, श्यामलाल बैंक की शाखा
एस. एम. एस. हाइवे, चौड़ा रास्ता, जयपुर व बैंक के
प्रधान कार्यालय में कार्यरत 14 सहाई कर्मचारियों
को पूर्ण वेतनमान में नियुक्ति दी जा चुकी है । यह भी
उल्लेख किया गया है कि श्रमिका को 3/4 वेतन देने व
पूर्ण वेतन देने व स्थाई करने के लिए शहर स्तर पर कोई
बरिष्ठता सूची जारी नहीं की, ऐसा नहीं कर बैंक ने श्रमिका
विरोधी नीति अपनाई । यह भी उल्लेख किया गया कि
पांचवे द्वितीय समझौते के तहत प्रत्येक सप्ताह 29 घण्टे
काम करने वाले कामगार को पूर्ण वेतन देने का प्रावधान है ।
अंशकालीन कर्मचारियों को पूर्ण वेतनमान पर नियुक्त करने
समय द्वितीय समझौते के अन्तर्गत पूर्ण वेतन देने का
प्रावधान है तथा भारत सरकार के पत्र दिनांक 3-10-88
के अनुसार सहाई संघ कर्मचारी का अलग से रोस्टर
बनाकर पूर्ण कालिक पद भरने का प्रावधान है । श्रमिका से
कनिष्ठ कामगारों को द्वितीय समझौते का उल्लंघन करते
पूर्ण वेतन का भुगतान बैंक द्वारा किया जा रहा है ।
श्रमिका को बैंक के परिपत्र दिनांक 29-4-92 व समझौता
दिनांक 19-10-66 के पैरा 206 एवं पांचवे द्वितीय
समझौते के खण्ड-18.4 के अनुसार पूर्ण वेतनमान नहीं
देना व स्थाई नहीं करना अनुचित तथा अवैध है व न्याय के
नैतिक सिद्धान्तों के प्रतिकूल है, जो अनुचित श्रम व्यवहार
की परिभाषा में आता है । प्रार्थना की गई कि श्रमिका को
प्रथम नियुक्ति की तिथि से ही पूर्णकालिक घोषित किया
जाए व कनिष्ठ श्रमिकों से पूर्व पूर्ण वेतनमान विचार
जाकर उरी तिथि से स्थाई कर सभी लाभ-परिभाषा
दिनांक जाए ।

विपक्षी की ओर से जवाब प्रस्तुत किया गया, जिसमें
प्राप्ति की गई कि महाप्रबन्धक (कार्यिक) का कोई पद
बैंक में नहीं है, अतः उपयुक्त पदकार न बनाए जाने के

कारण क्लेम खारिज होने योग्य है। यह भी उल्लेख किया गया कि महाप्रबन्धक का कोई पथक से कानूनी अस्तित्व नहीं है। स्टेट बैंक ऑफ इण्डिया (संविन्धीयरी बैंक) एक्ट, 1959 (जिसे बाद में अधिनियम, 1959 कहा गया है) की धारा-4 के अनुसार बैंक अपना कानूनी अस्तित्व रखती है व कोई वाद व विवाद सीधे बैंक के विरुद्ध प्रस्तुत किया जा सकता है न कि किसी पद के विरुद्ध। यह भी आपत्ति की गई कि क्लेम संघ के अध्यक्ष द्वारा प्रस्तुत किया गया है, जिसका कोई कानूनी अस्तित्व नहीं है। अतः उपयुक्त पक्षकार द्वारा विवाद प्रस्तुत नहीं किए जाने के कारण क्लेम खारिज होने योग्य है। यह भी उल्लेख किया गया कि श्रमिका के संघ की सदस्या होने के बारे में कोई सबूत पेश नहीं किया गया। यह भी आपत्ति की गई कि श्रमिका ने सेवा की शरायतों को मानकर बैंक में अंशकालीन सफाई कर्मचारी के रूप में कार्य किया, अतः वह इस बिन्दु को उठाने से विवर्धित है। यह भी उल्लेख किया गया कि श्रमिका को दिनांक 1-9-81 से बैंक के द्विपक्षीय समझौते के अनुसार सफाई का काम करने हेतु एक तिहाई वेतनमान पर रखा गया था न कि दिनांक 1-8-81 से। यह भी उल्लेख किया गया कि श्रमिका अंशकालीन सफाई कर्मचारी के रूप में प्रति सप्ताह केवल 12 घण्टे कार्य करती थी। दिनांक 1-6-91 से उसके कार्य की समयवधि बढ़ाकर 28 घण्टे तथा उसका वेतनमान 3/4 किया गया। श्रमिका ने इससे अधिक समय कार्य नहीं किया। श्रमिका को सफाई के घण्टे के अनुसार वेतन दिया गया, अतः श्रमिका से कनिष्ठ श्रमिक होने का प्रश्न उत्पन्न नहीं होता। महेश व महेन्द्र कुमार को पूर्ण वेतनमान दिए जाने से इंकार किया। कन्हैयालाल के बारे में उसके कार्य की अवधि 29 घण्टे से अधिक होने का उल्लेख किया गया। श्रमिका के वरिष्ठतम सदस्या होने के कथन को इंकार किया गया व यह भी उल्लेख किया गया कि दिनांक 1-6-91 से प्रति सप्ताह 29 घण्टे से वह कम काम कर रही थी व पांचवे द्वितीय समझौते के अनुसार पूर्ण वेतनमान प्राप्त करने की अधिकारिणी नहीं है। यह भी उल्लेख किया गया कि श्रमिका से कनिष्ठ किसी कर्मचारी को बैंक की जोहरी बाजार शाखा में पूर्ण वेतनमान पर नहीं रखा गया।

संघ की ओर से जवाब का प्रत्युत्तर प्रस्तुत किया गया जिसमें उल्लेख किया गया कि विवाद में जो पक्षकार बनाया गया है वह सही है व क्लेम में वर्णित तथ्यों को दोहराया गया।

पक्षकारों के अभिकथनों के आधार पर निम्नांकित विवाद बिन्दु बनाए गए :—

- (1) आया श्रीमती सुशीला से विपक्षी संस्थान में प्रतिदिन 6 घण्टे कार्य लिया जाता रहा है व वह पूर्णकालिक श्रमिक की श्रेणी में आती है ?
- (2) आया प्रार्थिनी से कनिष्ठ कामगारों को विपक्षी संस्थान द्वारा पूर्ण वेतनमान पर नियुक्ति दी गई है ?

(3) आया Non joinder of Proper Parties के आधार पर क्लेम खारिज होने योग्य है ?

(4) आया उपयुक्त पक्षकार के द्वारा विवाद प्रस्तुत न किए जाने के कारण क्लेम खारिज होने योग्य है ?

(5) आया श्रीमती सुशीला देवी ने सेवा की शरायते मानकर बैंक में अंशकालीन सफाई कर्मचारी के रूप में कार्य किया है, अतः वह इस बिन्दु को उठाने से विवर्धित है ?

(6) श्रीमती सुशीला देवी किस सहायता को प्राप्त करने की अधिकारिणी है ?

क्लेम के समर्थन में संघ की ओर से श्रमिका सुशीला देवी व सुरेश जेदिमा, संघ के अध्यक्ष के शपथ-पत्र प्रस्तुत किए गए, जिस पर प्रतिपरीक्षा करने का अवसर विपक्षी के अधिकार को दिया गया। प्रलेखीय साक्ष्य में प्रतिलिपि प्रार्थना-पत्र श्रमिका विनांक 1-8-81, 20-3-87, 16-4-87, 22-4-97, 28-2-87, 14-10-91 क्रमशः प्रदर्श 1, 2, 3, 4, 5, 6, प्रतिलिपि परिपत्र प्रदर्श डब्ल्यू-7 से 12, प्रतिलिपि पत्र महाप्रबन्धक डब्ल्यू-13, प्रतिलिपि द्वितीया समझौता प्रदर्श डब्ल्यू-14, प्रतिलिपि आवेदन-पत्र प्रदर्श डब्ल्यू-15, प्रतिलिपि प्रत्युत्तर प्रदर्श डब्ल्यू-16 व प्रतिलिपि असफल वार्ता प्रतिवेदन प्रदर्श डब्ल्यू-17 प्रस्तुत किए। इसके अतिरिक्त अप्रार्थी के प्रार्थना-पत्र के जवाब में श्रमिका के संघ की सदस्या शुल्क की रसीदे व संघ के रजिस्ट्रेशन प्रमाण-पत्र की प्रतिलिपि प्रस्तुत की गई। विपक्षी की ओर से सतीश कुमार अजमेरा, उपप्रबन्धक, बैंक का शपथ-पत्र प्रस्तुत किया गया, जिस पर प्रतिपरीक्षा करने का अवसर संघ प्रतिनिधि को दिया गया। प्रलेखीय साक्ष्य में प्रतिलिपि उपस्थिति रजिस्टर, प्रवर्ष एम-1 से एम-26 प्रस्तुत की गई।

वहस सुनी गई एवं पत्रावली का अवलोकन किया गया।

बनाए गए विवाद बिन्दुओं का विनिश्चय निम्न प्रकार किया जाता है :—

बिन्दु पंख्या 1: इस बारे में कोई विवाद नहीं है कि श्रमिका बैंक की जोहरी बाजार शाखा में अस्थाई अंशकालीन सफाई कर्मचारी के पद पर दिनांक 1-9-81 से कार्यरत थी। श्रमिका ने अपने शपथ-पत्र में उल्लेख किया है कि वह प्रथम नियुक्ति तिथि से प्रत्येक दिन सफाई कार्य प्रातः 7.00 बजे से 11.00 बजे व दोपहर 2.00 बजे से 4.00 बजे तक करती आ रही है, अतः उसने पूर्णकालिक श्रमिक के समान 6 घण्टे से अधिक कार्य किया है। प्रतिपरीक्षा में उसका कथन है कि वह 10.00 बजे तक झाड़ू निकालती थी व तत्पश्चात् कुर्सी, मेज की धुलाई करती थी व पुनः दोपहर 2.00 बजे से 4.00 बजे के बीच झाड़ू निकालती

थी व गटर-बाथरूम घोंती थी। उसने कहा है कि "20-3-87 से पहले मैं उतना ही काम करती थी, जितना कि एक तिहाई वेतन मिलता था। 20-3-87 के बाद मेरे काम के घण्टे बढ़ाए व उसी हिसाब से मेरा वेतन बढ़ा दिया था यही सही है।" उसके कथन से स्पष्ट है कि वह नियुक्ति तिथि से लगातार 6 घण्टे कार्य नहीं कर रही है व समय-समय पर उसका कार्यकाल बढ़ाया गया है। उसके द्वारा आवेदन दिनांक 28-4-87 को जो आवेदन प्रस्तुत किया गया है, उसमें उसने कार्य करने का समय प्रातः 7.30 बजे से 10.30 बजे व दोपहर को 2.00 बजे से 3.30 बजे होने का उल्लेख किया है, जो कुल समय साढ़े चार घण्टे होता है। सुरेश जेदिया ने भी शपथ-पत्र में श्रमिका का समय 7.00 बजे से 11.00 बजे तक व दोपहर 2.00 बजे से 4.00 बजे तक बैंक में सफाई कार्य करने का उल्लेख किया है, परन्तु प्रतिपरीक्षा में उसने स्वीकार किया है कि श्रमिका के कार्य करने के बावजूद उसे व्यक्तिगत जानकारी नहीं है, शपथ-पत्र में श्रमिका के कहने के आधार पर ऐसा उल्लेख किया गया है। दूसरी ओर सतीश कुमार अजमेरा का कथन है कि श्रमिका स्वयं ने उपस्थिति रजिस्टर प्रदर्श एम-1 से एम-26 में कार्य करने का समय प्रातः 8.00 बजे से 12.00 बजे तक अंकित कर रखा है, अतः श्रमिका का यह कथन कि वह 6 घण्टे कार्य करती थी; असत्य है। उसका कथन है कि श्रमिका प्रारम्भ में सप्ताह में कुल 12 घण्टे कार्य करती थी। तत्पश्चात् दिनांक 1-6-91 से उसके कार्य की सीमा अर्धरात्रि 28 घण्टे प्रति सप्ताह व उसका वेतनमान 3/4 किया गया एवं कार्य के घण्टों के अनुसार उसे वेतन का भुगतान किया जा रहा है। उपस्थिति रजिस्टर में श्रमिका के द्वारा प्रातः 8.00 बजे से 12.00 बजे तक कार्य किए जाने का उल्लेख है। उपस्थिति रजिस्टर प्रदर्श एम-1 में प्रदर्श एम-26 सन् 2000 में श्रमिका के द्वारा प्रातः 8.00 बजे से 12.00 बजे तक कार्य किए जाने का उल्लेख किया गया है। अतः प्रार्थिका का यह कथन कि वह नियुक्ति को दिनांक से लगातार 6 घण्टे कार्य करती रही है, विश्वास किए जाने योग्य नहीं है व सतीश कुमार अजमेरा का कथन विश्वास किए जाने योग्य है कि श्रमिका प्रारम्भ में सप्ताह में 12 घण्टे व दिनांक 1-6-91 से सप्ताह में 28 घण्टे कार्य कर रही है। अतः यह प्रमाणित नहीं है कि श्रमिका में प्रतिदिन बैंक में 6 घण्टे सफाई कार्य लिया गया। प्रतिलिपि द्विपक्षीय समझौता दिनांक 5-3-92 प्रवर्ग डब्ल्यू-7 व प्रतिलिपि परिपत्र प्रदर्श-8, 9 के अनुसार 29 घण्टे से अधिक कार्य करने वाले सफाई कर्मचारियों को पूर्ण वेतनमान दिए जाने का प्रावधान है व चूँकि श्रमिका का 29 घण्टे से अधिक कार्य करना प्रमाणित नहीं है, अतः

वह पूर्णकालिक श्रमिक की संज्ञा में नहीं आती है। इस बिन्दु का विनिश्चय इसी प्रकार दिया जाता है।

बिन्दु संख्या 2:-द्विपक्षी की ओर से अस्थाई अंशकालीन सफाई कर्मचारियों की वरीयता सूची प्रस्तुत की गई है, जो सन् 1999 में तैयार की गई है, उसमें श्रमिका का नाम क्रम संख्या-2 पर है। मंथ की ओर से ऐसा नहीं बताया जाता कि उक्त सूची में उल्लेख किए गए किसी कनिष्ठ सफाई कर्मचारी को पूर्णकालिक वेतनमान दिया गया हो। श्रमिका का कथन है कि बैंक की बावूनगर शाखा में महेश व किशनपोल शाखा में महेन्द्र कुमार व एस.एम.एस. शाखा में कन्हैयालाल उसमें कनिष्ठ होते हुए स्थाई कर दिए गए व पूर्ण वेतन का लाभ उन्हें दे दिया गया। उसका यह भी कथन है कि सत्यनारायण, श्यामलाल जो कि बैंक की किशनपोल शाखा में कार्यरत है को तथा 14 अन्य कनिष्ठ कामगार जो प्रधान कार्यालय में कार्यरत है, को पूर्ण वेतनमान का लाभ दिया गया है। ऐसा ही कथन सुरेश जेदिया ने दिये हैं। उसने स्वीकार किया है कि सत्यनारायण व श्यामलाल व अन्य 14 श्रमिक सप्ताह में 29 घण्टे से अधिक कार्य करते हैं। दूसरी ओर सतीश कुमार अजमेरा का कथन है कि महेश कुमार व महेन्द्र कुमार को पूर्ण वेतनमान नहीं दिया गया व जिनको पूर्ण वेतनमान दिया गया है, उन्हें कार्य के घण्टों के अनुसार दिया गया है। इस प्रकार यह प्रमाणित नहीं है कि महेश व महेन्द्र कुमार को बैंक के द्वारा पूर्ण वेतनमान दिया गया। जो पत्र जिन व्यक्तियों को पूर्ण वेतनमान दिया जाना बताया जाता है, उनके बारे में ऐसी कोई साक्ष्य मंथ की ओर से प्रस्तुत नहीं की गई कि वे अंशकालीन सफाई कर्मचारी के पद पर कार्यरत थे। श्रमिका को अंशकालीन कर्मचारियों में उन्हीं व्यक्तियों से वरिष्ठ कहा जा सकता है, जो कि अंशकालीन कर्मचारी के पद पर कार्यरत थे। जिन व्यक्तियों की सीधी नियुक्ति पूर्णकालिक श्रमिक के पद पर दी गई है, उनकी तुलना श्रमिका से नहीं की जा सकती, जो कि अंशकालिक सफाई कर्मचारी के पद पर नियुक्त थी। अतः यह प्रमाणित नहीं है कि श्रमिका से कनिष्ठ किसी अंशकालीन कर्मचारी को पूर्णकालिक वेतनमान का लाभ दिया गया।

यह उल्लेख करना भी उचित होगा कि प्रतिलिपि द्विपक्षीय समझौता दिनांक 5-3-92 प्रदर्श डब्ल्यू-7 के अनुसार बैंक में सफाई करने के स्थान का क्षेत्रफल व कार्य के घण्टों,

के आधार पर वेतनमान दिए जाने का प्रावधान है, जो कि निम्न प्रकार है:—

| To be Cleaned | Hours of work per week | Pay Scale |
|--|---|---|
| (A) upto 600 Sq. Ft. | Upto 3 hours | At Bank's discretion with a minimum of Rs. 100/- P.M. |
| (B) 601 Sq. Ft. to less than 1200 Sq.Ft. | more than 8 hrs. but less than 6 hours. | At Bank's discretion but with a minimum of Rs. 125/P.M. |
| (C) 1200 Sq. Ft. to 2000 Sq. Ft. | 6 hours to 13 hours. | One third of the scale wages with proportionate annual increment. |
| (D) 2001 Sq. Ft. to 3500 Sq. Ft. | More than 13 hours to 19 hrs. | 1/2 of the scale wages with proportionate annual increment. |
| (E) 3501 Sq. Ft. to 5000 Sq. Ft. | More than 19 Hrs. to 29 hrs. | 3/4 th of the scale wages with proportionate annual increment. |
| (F) 5001 Sq. Ft. and above | Above 29 hrs. | Full scale wages. |

In consideration of the above, both the parties hereby record the settlement reached on the above subject and put their signatures herein.

उक्त समझौते के अनुसरण में बैंक के द्वारा परिपत्र दिनांक 29-4-92 प्रदर्श डब्ल्यू-8 जारी किया गया है। इस प्रकार सफाई किए जाने वाले क्षेत्रफल व कार्य के घण्टों के आधार पर वेतनमान का लाभ दिए जाने का प्रावधान है। संघ की ओर से ऐसी कोई मास्य प्रस्तुत नहीं की गई कि श्रमिका के समान कार्य करने के घण्टों के अनुसार किसी अंशकालीन सफाई कर्मचारी को पूर्णकालिक वेतनमान दिया गया।

परिपत्र दिनांक 7-2-91 प्रदर्श डब्ल्यू-10 में यह प्रावधान है कि अंशकालीन अधीनस्थ कर्मचारियों को पूर्णकालिक नियुक्तियों को भरने में प्राथमिकता दी जाएगी। उक्त परिपत्र का खण्ड-II, जो कि निम्न प्रकार है, में उल्लेख है:—

- (ii) "As per the existing guidelines, at a Branch, where the working hours of a part-time permanent employee working in regular wage scale, are increased to longer working hours (i.e. from 1/3 to scale wages or 1/2 to 3/4 scale wages), but not on full time basis, the employee concerned is considered for such increase in working hours in the part-time position: in case there are more than 1 part-time employee at a branch, the senior or the senior most in service is considered for the purpose. This provision will continue under subord."

इस प्रकार क्षेत्रफल एवं कार्य के घण्टों के आधार पर वेतनमान दिए जाने के प्रावधानों को यथावत रखा गया है। दूसरे यह उल्लेख करना भी उचित होगा कि निर्देश में इस बारे में उल्लेख नहीं किया गया कि श्रमिका को पूर्णकालिक श्रमिका की भर्ती में प्राथमिकता नहीं दी गई। अतः इस बिन्दु पर विचार नहीं किया जा सकता। परिपत्र-II में अनुसूचित जाति व अनुसूचित जनजाति का पृथक से रोस्टर बनाए जाने का, परिपत्र दिनांक 3-10-88 प्रदर्श डब्ल्यू-12 में सफाई कर्मचारी का पृथक से रोस्टर बनाए जाने का प्रावधान है। प्रतिलिपि पत्र दिनांक 26-12-95 प्रदर्श डब्ल्यू-13 में अनुसूचित जाति व अनुसूचित जनजाति के अभ्यर्थियों को पूर्णकालिक मजदूरी पर नियुक्त किए जाने का प्रावधान है। द्वितीय समझौते के खण्ड-18.4 के अनुसार बैंक में भर्ती

के नियमों के अधीन पूर्णकालिक श्रमिकों की भर्ती करते समय स्थाई अंशकालीन कर्मचारी जो कि वेतनमान वा रहे हैं, को वरीयता देने का प्रावधान है। जैसाकि उल्लेख किया जा चुका है, निर्देश के अनुसार केवल इस बिन्दु पर विचार किया जाता है कि प्राशिक्षा से कनिष्ठ किसी कर्मचारी को पूर्णकालिक श्रमिक मानकर नियुक्ति दी गई। अतः इस बिन्दु पर विचार नहीं किया जा सकता कि पूर्णकालिक श्रमिकों की भर्ती में प्राशिक्षा को वरीयता का लाभ "क्योंकर" नहीं दिया गया।

उक्त विवेचन के आधार पर यह प्रमाणित नहीं है कि प्राशिक्षा से कनिष्ठ अंशकालीन कर्मचारियों को पूर्ण वेतनमान पर नियुक्त किया गया।

बिन्दु संख्या 3: विपक्षी की ओर यह आपत्ति की गई कि महाप्रबन्धक (कामिक) का बैंक में कोई पद नहीं है। इस बारे में विपक्षी की ओर से कोई मास्य पेश नहीं की गई। यह भी आपत्ति की गई कि कोई बाद बैंक के विरुद्ध प्रस्तुत किया जा सकता है न कि बैंक के पदाधिकारी के विरुद्ध। अधिनियम, 1959 के प्रावधान अधिनियम, 1947 के अन्तर्गत विवाद का निपटारा किए जाने के मामले में लागू नहीं होते। अधिनियम, 1947 के प्रावधानों के तहत यह विचार करना है कि विपक्षी "नियोजक" के अन्तर्गत आता है अथवा नहीं। ऐसी आपत्ति विपक्षी की ओर से नहीं की गई कि विपक्षी "नियोजक" के तहत नहीं आता। अतः इस बिन्दु का विनिश्चय अप्राथमिक के विरुद्ध किया जाता है।

बिन्दु संख्या 4: विपक्षी के विद्वान अधिवक्ता के द्वारा ऐसा कोई कारण नहीं बताया गया है कि संघ के अध्यक्ष के द्वारा विवाद "क्योंकर" नहीं उठाया जा सकता। अतः विपक्षी द्वारा इस बारे में की गई आपत्ति में कोई सार प्रतीत नहीं होता।

बिन्दु संख्या 5: विपक्षी के विद्वान अधिवक्ता ने इस बिन्दु पर जोर नहीं दिया है।

बिन्दु संख्या 6: बिन्दु संख्या 1 व 2 के विनिश्चय के आधार पर श्रमिका कोई सहायता प्राप्त करने की अधिकारिणी नहीं है।

पंचाट की प्रतिलिपि केन्द्रीय सरकार को अधिनियम, 1947 की धारा 17 की उपधारा (1) के प्रावधानों के अन्तर्गत प्रकाशनार्थ प्रेषित की जाये।

ह./-
पीठासीन, अधिकारी

नई दिल्ली, 22 मई, 2001

का. आ. 1339:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार पश्चिमी रेलवे के प्रबंधन के संबंध निधो-जकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[सं. एल.-41012/92/99-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd May, 2001

S.O. 1339.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Western Railway and their workman, which was received by the Central Government on 21-5-2001.

[No. L-41012/92/99/IR(B-I)]

AJAY KUMAR, Desk Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय,
जयपुर।

प्रकरण संख्या :—बी. जी. आई. टी./जे.—54/99

आदेश संख्या :—एल.—41012/92/99/आई. आर.

(बी—I) 24-8-99

पप्पू पुत्र श्री प्रभात निवासी ग्राम गुड्डया बाबा बख्शाल
जिला जयपुर द्वारा श्री आर. सी. नारंग सर्वस्य जयपुर
जिला भारतीय मजदूर संघ, जयपुर।

—प्रार्थी

बनाम

1. बरिष्ठ मण्डल बाणिज्य प्रबन्धक प. रे. मण्डल
रेल प्रबंधक, कार्यालय पावर हाउस रोड, जयपुर।

2. मण्डल रेलवे प्रबन्धक प. रे. मण्डल रेल प्रबन्धक,
कार्यालय पावर हाउस रोड, जयपुर।

—अप्रार्थीगण

उपस्थित :—

प्रार्थी की ओर से श्री आर. सी. नारंग, प्रतिनिधि
अप्रार्थीगण की ओर से श्रीमती माया जैन, अधिवक्ता
पंचाट दिनांक 9-4-2001

पंचाट

केन्द्रीय सरकार के द्वारा निम्न विवाद उक्त आदेश के
जरिए औद्योगिक विवाद अधिनियम, 1947 (जिसे बाद
में अधिनियम, 1947 कहा गया है।) की धारा 10
की उपधारा (1) के खण्ड—ब के प्रावधानों के अन्तर्गत
न्यायनिर्णयन हेतु निर्देशित किया गया :—

“Whether the action of the Railway Administration i.e. Sr. D.G.M. and D.R.M., Western Railway, Jaipur is justified in terminating the services of Shri Pappu S/o Shri Prabhat in violation of S. 25-F, S. 25-G of the I.D. Act, 1947? If not, what relief the workman is entitled and from what date?”

प्रार्थी की ओर से स्टेटमेंट ऑफ क्लेम प्रस्तुत किया
गया, जिसमें उल्लेख किया गया कि रेलवे के पत्र दिनांक
22-7-88 के द्वारा उसकी नियुक्ति स्टेशन मास्टर चौनुं
सामोद के अन्तर्गत दिनांक 10-8-88 को अंशकालीन सफाई
कर्मचारी के पद पर की गई थी। दिनांक 11-12-97
को बिना नोटिस दिए उसे सेवा से पृथक कर दिया, जबकि
वह सन् 1988 से लगभग 10 वर्ष से कार्यरत था। सेवा
पृथक करने के समय कोई वरिष्ठता सूची भी नहीं बनाई
गई। इस प्रकार अप्रार्थीगण के द्वारा उसकी सेवासमाप्ति
अधिनियम, 1947 की धारा 25—एफ, जी एवं औद्योगिक
विवाद (केन्द्रीय) नियम, 1957 (जिसे बाद में नियम,
1957 कहा गया है।) के नियम, 76,77 का उल्लंघन
कर की गई।

अप्रार्थी की ओर से जवाब में उल्लेख किया
गया कि विशेष मौसम के कारण अथवा नियमित नियुक्ति
की आवश्यकता नहीं होने पर मासिक दर के आधार पर
अनुबन्ध के अनुसार प्रतिदिन कुछ कार्य करने के लिए
अंशकालीन श्रमिक रखे जाते हैं व प्रार्थी को भी सविदा
के आधार पर चौनुं सामोद स्टेशन पर अंशकालीन सफाई
करने हेतु रखा गया था। ऐसे श्रमिक को बिना नोटिस दिए
अनुबन्ध के आधार पर हटाया जा सकता है। प्रार्थी ने
अक्टूबर, 1994 से जून, 1996 तक अनुबन्ध
के आधार पर अंशकालीन सफाई कर्मचारी का कार्य किया
तथा उसे दिनांक 1-7-96 में हटा दिया गया। प्रार्थी श्रमिक
की परिभाषा में नहीं आता। प्रार्थी को कोई नियुक्ति पत्र
जारी नहीं किया गया। उसे अनुबन्ध के आधार पर 300/-
रुपये मासिक दर पर रखा गया था। चौनुं सामोद स्टेशन
पर एक पूर्णकालिक सफाई वाले का कैंडर स्वीकृत है।
अंशकालीन सफाई कर्मचारी का कैंडर स्वीकृत नहीं है।
प्रार्थी की नियुक्ति नियमों के अनुसार नहीं की गई। एक
स्टेशन के श्रमिक से दूसरे स्टेशन के श्रमिकों के बीच
कनिष्ठ अथवा बरिष्ठ होने का प्रश्न उठाया नहीं होता।

अप्रार्थी द्वारा प्रार्थी की सेवा-पत्रावली अधिनियम, 1947 की धारा 25—एफ, जी, एच का उल्लंघन कर नहीं की गई। प्रार्थी के द्वारा जवाब का प्रत्युत्तर प्रस्तुत किया गया, जिसमें उसने क्लेम में वर्णित तथ्यों को दोहराया।

पक्षकारों के अधिकारों के आधार पर निम्नांकित विवाद बिन्दु बनाए गए :—

- (1) आया प्रार्थी को अप्रार्थी संस्थान में अनुबन्ध के आधार पर अंशकालीन सफाई कर्मचारी के रूप में रखा गया था, यदि हां, तो इसका प्रभाव ?
- (2) आया प्रार्थी औद्योगिक विवाद अधिनियम, 1947 के प्रावधानों के अन्तर्गत श्रमिक की परिभाषा में नहीं आता ?
- (3) आया प्रार्थी की नियुक्ति नियमों के अनुसार नियमित रूप से नहीं की गई थी, यदि हां, तो उसका प्रभाव ?
- (4) आया विपक्षी संस्थान ने औद्योगिक विवाद अधिनियम, 1947 की धारा 25—एफ, जी एवं केन्द्रीय नियम, 76, 77 का उल्लंघन कर सेवा समाप्त की गई है ?
- (5) प्रार्थी किस सहायता को प्राप्त करने का अधिकारी है ?

क्लेम के समर्थन में प्रार्थी की ओर से स्वयं का शपथ-पत्र प्रस्तुत किया गया, जिस पर अप्रार्थी विद्वान अधिकारता को प्रतिपरीक्षा करने का अवसर दिया गया। प्रलेखीय साक्ष्य में प्रतिलिपि प्रार्थना-पत्र समक्ष समझौता अधिकारी प्रदर्श डब्ल्यू—1, प्रतिलिपि असफल वार्ता प्रद्विषेदन प्रदर्श डब्ल्यू—2, प्रतिलिपि निर्देश आदेश प्रदर्श डब्ल्यू—3, प्रतिलिपि पत्र ए. सी. एम. प्रदर्श डब्ल्यू—4, प्रतिलिपि पत्र रेलवे बोर्ड दिनांक 8-1-97 प्रदर्श डब्ल्यू—5 प्रस्तुत की गई।

विपक्षी की ओर से सुरेन्द्र कुमार, विधि सहायक का शपथ-पत्र प्रस्तुत किया गया, जिस पर प्रार्थी के प्रतिनिधि की प्रतिपरीक्षा करने का अवसर दिया गया। प्रलेखीय साक्ष्य में निदेशक, ट्रेपिक कर्मश्रमिक के पत्र की प्रतिलिपि व प्रतिलिपि रसीद प्रस्तुत की गई।

बहस सुनी गई एवं पत्रावली का अवलोकन किया गया।

बनाए गए विवाद बिन्दुओं का विनिश्चय निम्न प्रकार किया जाता है :—

बिन्दु संख्या :—1 यह विवादित नहीं है कि प्रार्थी को अंशकालीन सफाई कर्मचारी के रूप में चौमू सामोव रेलवे स्टेशन पर सफाई कार्य हेतु नियोजित किया गया था। अप्रार्थी की ओर से कोई लिखित में अनुबन्ध पेश नहीं किया गया, जिसके अनुसार उसे एक निश्चित अवधि हेतु नियोजित

किया गया हो बल्कि मौखिक रूप से नियोजित करने का कथन सुरेन्द्र कुमार अप्रार्थी के साक्षी द्वारा किया गया है। इस प्रकार यह प्रमाणित नहीं है कि प्रार्थी को किसी लिखित अनुबन्ध के आधार पर उक्त कार्य हेतु नियोजित किया गया हो।

बिन्दु संख्या :—2 व 3 अधिनियम, 1947 की धारा 2—एस में कर्मकार की परिभाषा निम्न प्रकार दी गई है :—

“Workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- (i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) Who is employed in the police service or as an officer or other employee of a prison; or
- (iii) Who is employed mainly in a managerial or administrative capacity; or
- (iv) Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

प्रार्थी विपक्षी के रेलवे स्टेशन पर सफाई का कार्य करता था जो कि शारीरिक कार्य था। वह विपक्षी से उक्त कार्य करने हेतु पारिश्रमिक प्राप्त करता था, जिसके बारे में कोई विवाद नहीं है। अप्रार्थी के विद्वान अधिकारता ने तर्क दिया है कि अंशकालीन श्रमिक “कर्मकार” की परिभाषा के अन्तर्गत नहीं आता। उनका यह भी तर्क है कि प्रार्थी की नियुक्ति नियमानुसार नहीं की गई व स्टेशन अधीक्षक के पास जो इम्प्रेस्ट की राशि उपलब्ध होती थी उससे प्रार्थी की मजदूरी का भुगतान किया जाता था। उनका तर्क है कि ऐसी दशा में प्रार्थी “कर्मकार” की श्रेणी में नहीं आता। उन्होंने अपने तर्क के समर्थन में जे.टी. 1996 (10) एस.सी. 329 यूनियन आफ इण्डिया व अन्य बनाम विशम्भर दत्त व ए.आई.आर. 1997 एस.सी. 3657 हिमांशु कुमार यिथार्थी व अन्य बनाम स्टेट आफ बिहार राज्य व अन्य को उद्धृत किया है। यूनियन आफ इण्डिया बनाम विशम्भर दत्त के मामले में तथ्यों के सार माजीमण की नियुक्ति नियमित पद

पर, चयन के नियमों के अनुसार, नियमित आधार पर नहीं की गई थी। यह अभिनिर्धारित किया गया कि अधिकरण ने उन्हें नियमितकरण का निर्देश देकर गलती की। हिमान्शु कुमार विद्यार्थी बनाम स्टेट ऑफ बिहार राज्य व अन्य के मामले में माननीय उच्चतम न्यायालय द्वारा यह अभिनिर्धारित किया गया —

“Every Department of the Government cannot be treated to be industry. When the appointments are regulated by the statutory rules, the concept of ‘industry’ to that extent stands excluded. Admittedly, they were not appointed to the posts in accordance with the rules but were engaged on the basis of need of the work. They are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of “retrenchment” therefore, cannot be stretched to such an extent as to cover these employees. The learned counsel for the petitioners seeks to contend that in the High Court the petitioners did not contend that it is a case of retrenchment but termination of their services is arbitrary. Since they are only daily wage employees and have no right to the posts. Their disengagement is not arbitrary.”

प्रस्तुत मामला प्रार्थी की सेवा के नियमितकरण का नहीं है, अतः यूनियन ऑफ इण्डिया बनाम विशम्भर वत्त का न्याय दृष्टान्त प्रस्तुत मामले में लागू नहीं होता। रेलवे विभाग उद्योग न हो, ऐसा नहीं बताया जाता। प्रार्थी दैनिक मजदूरी पर कार्यरत हो ऐसा भी नहीं पाया जाता बल्कि उसे मासिक आधार पर मजदूरी का भुगतान होता था। हिमान्शु कुमार विद्यार्थी के मामले में याची दैनिक मजदूरी पर कार्यरत था। उसकी सेवा समाप्ति का विवाद सीधे उच्च न्यायालय में उठाया गया था। याची के विद्वान अधिवक्ता ने उच्चतम न्यायालय के समक्ष यह तर्क दिया था कि उच्च न्यायालय के समक्ष याची का विवाद छटनी से सम्बंधित नहीं था बल्कि स्वेच्छाचरिता के आधार पर सेवा समाप्ति के बाबत था। प्रस्तुत मामले के तथ्य उक्त मामले से भिन्न हैं। प्रस्तुत मामले में प्रार्थी का कथन है कि उसकी सेवा समाप्ति अधिनियम, 1947 के प्रावधानों का उल्लंघन कर की गई है। उक्त परिस्थितियों में प्रस्तुत मामला उक्त मामले से भिन्न है। इस बारे में कोई विवाद नहीं है कि प्रार्थी की नियुक्ति साक्षात्कार के बिना की गई व उसे कोई नियुक्ति-पत्र जारी नहीं किया गया, जैसा कि प्रार्थी ने अपने कथन में स्वीकार किया है परन्तु एक कर्मकार के लिये न तो नियमित नियुक्ति होने की आवश्यकता है व न नियुक्ति पत्र उसके पक्ष में जारी होने की। अशकालीन कर्मचारी भी कर्मकार की श्रेणी में आता है व उसकी नियुक्ति को समाप्त करना छटनी के तहत आता है। इन बारे में ग्रार एन डब्ल्यू 1989(2) मशवन्त सिंह यादव बनाम स्टेट ऑफ राजस्थान

न्याय दृष्टान्त का अवलोकन किया जा सकता है। इस प्रकार प्रार्थी अधिनियम, 1947 के अन्तर्गत परिभाषित श्रमिक की श्रेणी में आता है।

बिन्दु संख्या 4—यह विवादित नहीं है कि प्रार्थी ने विपक्षी के अधीन चौमू सामोद रेलवे स्टेशन पर दिनांक 11/8/88 से कार्य किया। सुरेन्द्र कुमार का कथन है कि प्रार्थी ने अगस्त, 96 तक कार्य किया। ए सी एम पत्र दिनांक 11-12-97 में स्टेशन मास्टर, चौमू सामोद को निर्देशित किया गया है कि प्रार्थी की सेवा तुरन्त प्रभाव से समाप्त कर दी जाये, जिससे प्रार्थी की सेवा समाप्ति दिनांक 11-12-97 से प्रमाणित होती है। इस प्रकार प्रार्थी के द्वारा लगातार दिनांक 11-8-88 से 11-12-97 तक अप्रार्थी के अधीन कार्य करना प्रमाणित है व सेवा समाप्ति के पूर्व के एक वर्ष में 240 दिन से अधिक सेवा करना भी प्रमाणित है। यह विवादित नहीं है कि प्रार्थी की सेवा समाप्ति से पूर्व, अधिनियम, 1947 की धारा 25-एफ के प्रावधानों के तहत न तो प्रार्थी को एक माह का नोटिस दिया गया व न नोटिस धेतन व न भुआवजा। अप्रार्थी की ओर से यह तर्क दिया गया है कि इम्प्रीस्ट के आधार पर प्रार्थी को भुगतान किया जाता था। ऐसी दशा में छटनी के प्रावधान प्रार्थी के मामले में लागू नहीं होते। प्रार्थी को अप्रार्थी द्वारा द्वारा इम्प्रीस्ट से मजदूरी का भुगतान करने से यह नहीं कहा जा सकता कि प्रार्थी की सेवा समाप्ति छटनी के तहत नहीं आती। प्रत्येक प्रकार की सेवा समाप्ति जो कि अधिनियम, 1947 की धारा 2(ओ) के अन्तर्गत छटनी में दिये गये अववाद के तहत नहीं आती हो, छटनी के तहत आती है। प्रार्थी को कार्य कर पर आने के लिये मना करना छटनी के तहत आता है। इस प्रकार प्रार्थी की सेवा समाप्ति अधिनियम, 1947 की धारा 25-एफ का उल्लंघन कर किया जाना प्रमाणित है। प्रार्थी के विद्वान प्रतिनिधि ने अधिनियम, 1947 की धारा 25-जी व नियम, 1957 के नियम, 76, 77 के उल्लंघन किये जाने के बारे में मे जोर नहीं दिया है।

बिन्दु संख्या 5—प्रार्थी की सेवा समाप्ति अधिनियम, 1947 की धारा 25-एफ का उल्लंघन कर की गई है, अतः उसकी सेवा समाप्ति अनुचित एवं अवैध पाई जाती है व प्रार्थी अप्रार्थी के अधीन पुनः सेवा में आने का अधिकारी होगा। प्रार्थी की सेवा अप्रार्थी के अधीन निरन्तर मानी जायेगी। प्रार्थी, अप्रार्थी से सेवा समाप्ति के समय जो मजदूरी प्राप्त कर रहा था उस दर से पिछली मजदूरी के रूप में प्राप्त करने का अधिकारी होगा। अप्रार्थी अधिनियम, 1947 की धारा 25-एफ की पालना कर प्रार्थी की सेवा समाप्त करने के लिये स्वतंत्र होगा।

पचाट की प्रतिलिपि केन्द्रीय सरकार को अधिनियम, 1947 की धारा 17 की उपधारा (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जाये।

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पीठासीन अधिकारी

नई दिल्ली, 22 मई, 2001

का.अ. 1340—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तरी रेलवे के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[सं. एल-41012/124/2000-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd May, 2001

S.O. 1340.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Northern Railway and their workman, which was received by the Central Government on 21-5-2001.

[No. L-41012/124/2000-IR(B-I)]
AJAY KUMAR, Desk Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम
न्यायालय, जयपुर

प्रकरण संख्या :—सी.जी.आई.टी./58/2000

आदेश संख्या :—एल-41012/124/2000-आई.

आर. (बी-1) 11-10-2000

अनुबं धां पुल थो यामीन खां जाति कायमखानी निवासी
मंगल कालोनी, वार्ड नम्बर 13, चम्प

—प्रार्थी

बनाम

मण्डल रेल प्रबंधक, उत्तरी रेलवे, बीकानेर।

—अप्रार्थी

उपस्थित :—

प्रार्थी की ओर से—श्री आर. पी. मित्रका

अप्रार्थी की ओर से—कोई नहीं

पंचाट दिनांक 30-3-2001

पंचाट

केन्द्रीय सरकार के द्वारा उक्त आदेश के जरिए निम्न
विवाद औद्योगिक विवाद अधिनियम, 1947 (जिसे बाद में
अधिनियम, 1947 कहा गया है।) की धारा 10 की उपधारा
(1) के खण्ड-घ के प्रावधानों के अन्तर्गत न्याय निर्णयन
हेतु निर्देशित किया गया :—

“Whether the action of the Railway Administration, Northern Railway, Bikaner Division in terminating the services of Shri Ayub Khan S/o Shri Yasin Khan was justified? If not, what relief the workman is entitled to?”

प्रार्थी की ओर से स्टेटमेंट आफ क्लेम प्रस्तुत किया गया, जिसमें उल्लेख किया गया कि उसकी नियुक्ति भारतीय रेल सेवा उत्तरी रेलवे, बीकानेर मण्डल के नियोजन में अप्रार्थी के अधीन रेलवे स्टेशन नलाई बड़वा जिला मुख पर दिनांक 1-7-95 को सफाईवाला के पद पर दैनिक वेतनभोगी श्रमिक के रूप में की गई थी। उसने दिनांक 16-4-97 तक निरन्तर उक्त पद पर कार्य किया। दिनांक 16-4-97 को बाद दोपहर से मौखिक आदेश के द्वारा उसकी सेवा समाप्त कर दी गई। सेवा समाप्ति से पूर्व न तो उसे एक माह का नोटिस दिया गया व न नोटिस वेतन एवं न ही मुआवजा। कर्मचारों की कोई वरिष्ठता सूची भी जारी नहीं की गई व “प्रथम आए आखिर जाए” के सिद्धांत का उल्लंघन किया गया। उसकी सेवा समाप्ति के पश्चात् अप्रार्थी द्वारा अनेक श्रमिकों को नियोजित किया गया। इस प्रकार अप्रार्थी के द्वारा उसकी सेवा समाप्ति अधिनियम, 1947 की धारा 25-एफ, जी, एच का उल्लंघन कर की गई। प्रार्थना की गई कि प्रार्थी की सेवा समाप्ति को अवैध एवं अनुचित घोषित किया जाये व उसे सेवा में निरन्तरता के लाभ सहित पुनः बहाल किया जाए।

अप्रार्थी की ओर से श्री बनवारी लाल गुप्ता का उपस्थित पत्र दिनांक 6-2-2001 को प्रस्तुत किया गया। इससे पूर्व दिनांक 5-1-2001 को विपक्षी की ओर से बावजूद तामील नोटिस के उपस्थित न आने के कारण एक पक्षीय कार्यवाही की गई। अप्रार्थी की ओर से एक पक्षीय कार्यवाही निरस्त किये जाने हेतु कोई आवेदन प्रस्तुत नहीं किया गया व आगामी तारीख दिनांक 12-3-2001 व दिनांक 26-3-2001 को भी अप्रार्थी की ओर से कोई उपस्थित नहीं हुआ। इस प्रकार अप्रार्थी की ओर से क्लेम का कोई जवाब प्रस्तुत नहीं किया गया।

प्रार्थी की ओर से स्टेटमेंट आफ क्लेम के समर्थन में स्वयं का शपथ-पत्र प्रस्तुत किया गया। क्लेम के समर्थन में प्रार्थी की ओर से प्रतिलिपि उपस्थिति रजिस्टर प्रदर्श सी-1, प्रतिलिपि प्रार्थना पत्र समक्ष समक्षता अधिकारी प्रदर्श सी-2, प्रतिलिपि असफल वार्ता प्रतिवेदन प्रदर्श सी-3 प्रस्तुत किये गये।

बहुसं सुनी गई एवं पढ़ावची का अवबोधन किया गया।

प्रार्थी का कथन है कि उसने अप्रार्थी के अधीन दिनांक 1/7/95 से 16/4/97 तक निरन्तर दैनिक वेतनभोगी श्रमिक के रूप में सफाईवाला के पद पर कार्य किया व दिनांक 16-4-97 को बिना किसी कारण से जबानी आदेश से उसे सेवा से पृथक् कर दिया। सेवा से पृथक् करने से पूर्व न तो

उसे 1 माह का नोटिस दिया गया न नोटिस वेतन व न ही मुआवजा। प्रार्थी से कनिष्ठ श्रमिकों की सेवा में प्रार्थी की सेवा समाप्ति के पश्चात् बनाये रखा। प्रार्थी के कथन का समर्थन कि उसने दिनांक 1-7-95 से 16-4-97 तक विपक्षी के अधीन लगातार कार्य किया केवल 1 दिन 30 दिसम्बर, 1996 को छोड़कर उपस्थिति रजिस्टर प्रदर्शनी सी-1 से होता है। यह प्रमाणित है कि दिनांक 16-4-97 से पूर्व एक कैलेंडर वर्ष में 240 दिन से अधिक उसने कार्य किया। प्रार्थी द्वारा प्रस्तुत की गई साक्ष्य से यह भी प्रमाणित है कि दिनांक 16-4-97 को अप्रार्थी द्वारा प्रार्थी की सेवा समाप्त करने से पूर्व न तो एक माह का नोटिस दिया गया न नोटिस वेतन व न मुआवजा। सेवा समाप्ति के समय प्रार्थी से कनिष्ठ श्रमिक विपक्षी संस्थान में कार्यरत थे व इस प्रकार "प्रथम आण आखिर जाण" सिद्धांत का उल्लंघन किया गया। इस प्रकार अप्रार्थी के द्वारा प्रार्थी की सेवा समाप्ति अधिनियम, 1947 की धारा 25-एफ व जी का उल्लंघन कर दिया जाना प्रमाणित है।

अप्रार्थी के द्वारा प्रार्थी की सेवा समाप्ति अवैध व अनुचित होता प्रमाणिक है। व प्रार्थी अप्रार्थी के अधीन पुनः नियोजन में आने का अधिकारी होगा। प्रार्थी अप्रार्थी की सेवा में निरन्तर माना जायेगा। पिछली मजदूरी दिलाये जाने के बारे में यह उल्लेख करता उचित होगा कि प्रार्थी ने विवाद समझौता अधिकारी के समक्ष सन् 1999 में उठाया है। प्रार्थी ने शपथपत्र में उल्लेख किया है कि उसे सेवा में लिये जाने बाबत आश्वासन दिये जाते रहे। मामले की परिस्थितियों को दृष्टिगत रखते हुये पिछली मजदूरी के रूप में 50 प्रतिशत मजदूरी दिलाया जाना उचित होगा। इस प्रकार प्रार्थी पिछली मजदूरी के रूप में 50 प्रतिशत मजदूरी जो कि वह सेवा समाप्ति के समय प्राप्त कर रहा था, प्राप्त करने का अधिकारी होगा।

पंचाट की प्रतिलिपि केन्द्रीय सरकार को अधिनियम, 1947 की धारा 17 की उपधारा (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जाये।

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पीठासीन अधिकारी

नई दिल्ली, 22 मई, 2001

का.आ.1341:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उसरी रेलवे के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जयपुर के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[सं. एल-41012/233/99-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd May, 2001

S.O. 1341.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Northern Railway and their workman, which was received by the Central Government on 21-5-2001.

[No. L-41012/233/99/IR-(B-I)]

AJAK KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
JAIPUR

Case No. CGIT-2/2000

Reference No. L-41012/233/99/IR(B-I)
dt. 23-12-99.

Chand Mohd.

S/o. Sh. Nazir Mohd.

Mohalla, Damiyan.

Shittla gatc, Bikaner-334001 .. Applicant.

V/s.

(1) Union of India.

Through General Manager, N. Rly Hd.

Qts Office, Baroda House, New Delhi,

(2) Sr. Divisional Operating Manager.

Divisional Office, Northern Railway, Bikaner.

(3) The Divisional Personnel Office.

Divisional Office, Northern Railway, Bikaner.

Non-Applicants

ATTENDENCE :

For the applicant : Shri Arvind Singh.

For the non-applicant : Shri Tej Prakash
Sharma.

Dated of Award : 9-4-2001

AWARD

The Central Government has referred the following dispute under clause (d) of sub-section (1) of Section (10) of the Industrial Disputes Act, 1947 for adjudication.

"Whether the action of the Northern Railway, Bikaner removing Shri Chand Mohd. S/o Shri Nazir Mohd.,

Pointsman, Napasar Railway station from service w.e.f. 8-8-1996 is just, legal and tenable under the principle of natural justice? If not to what relief the workman is entitled to and from what date?"

The applicant filed the statement of claim. On behalf of the non-applicant reply to the claim was filed. The facts stated in the statement of claim and in the reply thereto have been mentioned in the Order dated 21-3-2001 passed in this case about the fairness of the enquiry, and so they may not be repeated again. By the above order the enquiry against the applicant for absence from duty as Pointsman from 29-8-94 to 16-1-95 was held to be fair and proper.

Heard final arguments of the learned counsel for the applicant and the non applicant and per-used the record.

The learned counsel for the applicant has not raised any contention regarding the proof of charge levelled against the applicant. His only contention is that punishment of removal from service in respect of charge of absence from duty from 29-8-94 to 16-1-95 is excessive particularly because the applicant was on medical treatment during the above period. The applicant didn't attend the enquiry and didn't furnish any proof regarding his illness before the enquiry officer. There being no evidence about illness of the applicant during above period, it can't be said that the applicant was ill during the above period. The applicant remained absent for quite a long period. He was holding responsible job of pointsman. The charge against the applicant is of serious nature keeping in view his post. It has been held by the APEX Court in case 'Inspecting Asst Commissioner v/s. Sharatnarayan reported in 1998 SCC (LQS) 316 that Court can't go in the question of punishment unless it is of the view that punishment imposed is such that no reasonable person could have ever imposed such a punishment. Keeping in view the above pronouncement and the misconduct of the applicant it can't be held that punishment of removal from service is excessive.

Thus the action of the non-applicant in removing the applicant from service is just and legal and doesn't violate the principle of natural justice. The applicant is thus not entitled to any relief.

The copies of Award may be sent to the Central Government for publication under Section 17(1) of the Act, 1947.

Sd/-

Presiding Officer

नई दिल्ली, 22 मई, 2001

काया 1342—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जयपुर नागौर आंचलिक ग्रामीण बैंक के प्रबंधन के संबंध नियोजका और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जयपुर के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[स एल-12012/10/94—आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd May, 2001

S.O. 1342.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Jaipur Nagaur Aanchalik Gramin Bank and their workman, which was received by the Central Government on 21-5-2001.

[No. L-12012/185/94-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

Case No. CIT-B-36/97

Reference No. L-12012/185/94/IRB-I dt. 8-12-97
The Secretary, Gramin Bank Employees Union,

59, Patel Colony, Sardar Patel Marg,
C-Scheme, Jaipur. . Applicant.

Versus

The Chairman, Jaipur Nagaur Aanchalik
Gramin Bank, 56, Sardar Patel Marg,
Jaipur. . . Non-applicant.

ATTENDANCE :

For the applicant : Sh. Rajiv Sogarwal, Advocate.

For the non-applicant : Sh. Ashok Mehta, Advocate.

Date of Order 27-3-2001.

ORDER

The following dispute was referred by the Central Government under clause (d) of sub-section (1) of the Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as the Act, 1947) for adjudication :

"Whether the demand of the Gramin Bank Employees Union for allowance of Rs. 489 to clerk-cum-cashier w.e.f. 1-9-87 is legal and justified. If not, to what relief the workman are entitled?"

The Secretary, Gramin Bank Employees Union (hereinafter referred as the Union) filed the statement of claim stating that the Union is registered under the Trade Unions Act and represents the majority of the employees working in the Jaipur Nagaur Anchalik Gramin Bank (hereinafter referred as the Bank). It was further stated that upon pronouncement of the Award by National Industrial Tribunal (hereinafter referred as the NIT) on 30-4-90, the Government of India has issued an order dt. 22-2-91 directing all the Regional Rural Banks (hereinafter referred as the RRBs) in India to pay the allowances/special allowances and other benefits, which are provided in the Bi-partite settlement and service regulations of the concerned sponsor Banks be extended to the employees/officers of RRBs respectively. In the said order dt. 22-2-91 the Government of India had stated that the award of the NIT dated 28-4-99 and the recommendations of the Equation Committee dated 16-1-91 have since been accepted and in pursuance thereof the instructions were being issued in terms of provision (1) to Section 17, of the RRB Act, 1976 for implementing the award and the recommendations of the Equation Committee immediately. It was further stated that in the sponsor Bank an allowance of Rs. 489 pm is being paid to the Head Cashier category "E" simply because he possess the key of safe whereas in case of RRBs, the person holding the charge of keys is forced to deal with additional burden of handling cash transactions and is being paid key cash functioning allowance @ Rs. 189 pm. The clerical staff working in the Bank perform the same functions and duties as performed by Head Cashier of category "E" in the sponsor Bank i.e. UCO Bank. It was prayed that the non-applicant be directed to pay the allowances of Rs. 489 pm to the clerk-cum-cashier of the Bank w.e.f. 1-9-87 as per the NIT award.

The respondent in reply to the claim raised the objection that it has not been mentioned in the petition as to who are members of the Union connected with the dispute and, therefore, the claim filed by the Union is not maintainable. It was denied that duties of the cashier working in the Bank are similar to the Head Cashier category "E" working in the Schedule Bank. It was stated that in the Bank there is no post of Head Cashier. The post of cashier incharge is there in the Bank which is equivalent to the post of cashier incharge working in the schedule Bank and, therefore, allowance of Rs. 189 pm is being paid in the form of cashier incharge allowance which is paid to the cashier incharge working in the Schedule Bank. In the Schedule Bank there is a post of Head Cashier under whom 5 to 6 cashiers work and in addition to supervisory duties he has to perform certain other functions which are not required to be performed by the cashier incharge of the Bank. The duties of Head Cashier category "E" as per the Bi-partite Settlement are as follows :—

XIX प्रधान खजांची — श्रेणी "क"

(भारतीय स्टेट बैंक के सहयोगी सभी बैंकों के लिए)
उनके कर्तव्य निम्नलिखित सभी कर्तव्यों या उनमें से किसी कर्तव्य के साथ वहीं हैं जो श्रेणी (क), (ख), (ग), या (घ) के प्रधान खजांचीयों के हैं :—

- (1) बिलों, चैकों आदि का उन्मोचन/परांकन आदि ।
- (2) अभिमत संकलन कार्य और देशी भाषाओं में किए गए हस्ताक्षरों का सत्यापन (उस सीमा तक जहाँ तक श्रेणी क, ख, ग, या घ के अन्तर्गत पहले समाविष्ट न किया गया हो) ।
- (3) समाशोधन और गोदाम विभागों आदि का प्रभारी होना ।
- (4) उनके अधीन कार्यरत नकदी विभाग के कर्मचारियों को गारंटी देना ।
- (5) रु. 15000/- तथा इस राशि तक के समाशोधन एवं अंतरण चैकों, वाउचरों (नामे या जमा) आदि को स्वतंत्र रूप से तथा रु. 15000/- तक के नकदी वाउचरों को प्राधिकृत व्यक्ति के साथ पारित करना ।

The above duties are not required to be performed by the cashier incharge working in the Bank. Simply on account of holding the keys it cannot be said that cashier incharge is entitled to allowance admissible to Head Cashier category "E". It was further stated that after consultation with the Central Government as in formed vide letter dt. 5-7-91 in the sponsor Bank's the gradation of Head Cashier is made on the basis of the units/clerks/cashiers working under them. Normally it also depends upon the volume of business. Hence in RRBs the Head Cashier allowance as directed by Government of India is being paid. It was stated as per the directions of the award the cashier incharge working in the Bank is entitled to allowance of Rs. 189 per month. It was further stated that no allowance is being paid in the name of key allowance. It was also stated that the duties of cashier incharge working in the Bank are similar to the duties of the cashier incharge working in the pay offices/branches which are as follows as per the 5th Bi-partite Settlement :—

"वेतन कार्यालयों अथवा शाखाओं में नकदी के प्रभारी खजांची वेतन कार्यालय तथा शाखाओं में कार्यरत एक ही खजांची जो किसी अधिकारी के साथ मिलकर संयुक्त रूप से नकदी या कीमती वस्तुओं की अभिरक्षा करता है और उसकी सुरक्षा के लिए उत्तरदायी है तथा जो नकदी विभाग के संचालन के लिए उत्तरदायी है ।"

The cashier incharge working in gramin bank is being paid the similar allowance which is paid to the cashier incharge of the sponsor Banks.

On the basis of the pleadings of the parties the following points of disputes were framed :—

विवाद बिन्दु :—

- (1) ग्राम्या ग्रामीण बैंकों में कार्यरत लिपिक के द्वारा वैसे ही कार्य किया जाता है जैसा कि यूको बैंक की शाखाओं में कार्यरत हेड कैशियर कैटेगरी के "ई" द्वारा ।
- (2) ग्राम्या ग्रामीण बैंक एम्पलाईज द्वारा क्लेम चलने योग्य नहीं है ।
- (3) ग्राम्या ग्रामीण बैंकों में कार्यरत क्लर्क-कम-कैशियर 489 रु. भत्ता प्राप्त करने का अधिकारी है?
- (4) अनुतोष ।

On behalf of the Union affidavit of Shri Ajay Pareek, clerk-cum-cashier working in the Head Office of the Bank was filed. The learned counsel for the opposite party was given opportunity to cross examine him on his affidavit. The applicant also filed the copy of the circular dt. 11-1-92 of the Bank marked Ex. R-1, copy of the 5th Bipartite Settlement Ex. R-2 and the copy of the circular dt. 5-7-91 of the NABARD Ex. R-3. On behalf of the non-applicant affidavit of Shri Giridhar Gopal, Sr. Manager of the Bank was filed. The learned representative of the Union was given opportunity to cross examine him on his affidavit. The respondent also filed the copy of the 5th Bipartite Settlement, copy of the circular of the NABARD dt. 5-7-91 and the copy of the circular of the Bank dt. 11-1-92 marked Exs. M-1, M-2 and M-3 respectively.

Heard arguments of the learned representative of the applicant and the learned counsel for the non-applicant and presented the record. The points are decided as follows :—

Point No. 1:—Shri Ajay Pareek working as clerk-cum-cashier in the Head Office of the Bank examined on behalf of the union has stated that the clerk-cum-cashier staff working in the Gramin Banks perform the same functions and duties as being performed by the Head Cashier category "E" of the branches of the UCO Bank i.e. sponsor Bank. An allowance of Rs. 489 per month is paid to the Head Cashier category "E" simply because he possess the keys of safe, whereas in the case of the Bank persons holding the charge of the keys is also forced to deal with the additional burden of handling cash transactions but is paid only Rs. 189 per month as allowance. In cross examination he has admitted that at page 306 in clause 19 of the Bipartite Settlement the duties of Head Cashier category "E" has been correctly mentioned. The above duties have already been reproduced above. He has admitted that he does not perform any duties prescribed for Head Cashier of category "E". There remains, therefore, no dispute that clerks working in the Gramin Bank do not perform the same duties which are performed by the Head Cashier category "E" in the sponsor Banks. Shri Giridhar Gopal Asopa, Sr. Manager of the Bank has stated that there is lot of difference in between the duties of cashier working in the rural Banks and

head cashier of category "E" working in schedule Bank. There is no post of Head Cashier in the Bank. Instead the post of cashier incharge is there in the Bank. The duties of the cashier incharge working in the Bank are similar to the duties of the cashier incharge in pay offices/branches of the sponsor banks and allowance of Rs. 189 pm is paid at par with them. In the schedule Bank post of Head Cashier is there under whom more than 5 cashiers work and thus his duties include supervisory work also. The cashier incharge working in the Bank is not required to perform the duties of Head Cashier category "E" working in the schedule Bank. His statement also supports the above finding that the duties of the clerks working in the Bank differ from the duties of Head Cashier category "E" working in the sponsor Bank. The point is, therefore, decided against the applicant.

Point No. 2 :—The learned counsel for the non-applicant has not pressed this point.

Point No. 3 :—In the circular dt. 5-7-91 issued by the NABARD marked Ex. M-2 it has been stated that the issue of giving Head Cashier allowance working in sponsor Banks to be paid to the cashier incharge working in the Bank was considered and it was decided that in the sponsor Banks the gradation of Head Cashiers are made on the basis of the units of Clerks/Cashiers working under them. Normally it also depends on the volume of business. Hence in RRBs the Head Cashier Allowance need not be paid. The Cashier incharge allowance as directed by GOI may be paid.

The above circular has been issued with regard to implementation of NIT Award read with the reference to Equation Committee. Thus as per the directions of the NABARD the clerks working in the Banks are not entitled to an allowance of Rs. 489 per month at par with the Head Cashier category "E" working in the sponsor Banks. The learned counsel for the applicant Union has contended that in branches of the sponsor Banks the post of Head Cashier is not there and the cashiers working in branches are paid an allowance of Rs. 489 per month and, therefore, the clerks working in the Bank as cashier incharge are also entitled to the same allowance. There is no pleading in support of the above contention and, therefore, the same does not require to be considered at all

Point No. 4 :—On the basis of the above discussion the demand of the Gramin Bank Employees Union for allowance of Rs. 489 per month is not legal and justified and, therefore, clerks-cum-cashiers of the Gramin Banks are not entitled to any relief.

The copies of the Award may be sent to the Central Government under Section 17(1) of the Act, 1947 for publication.

Sd./- Illegible
Presiding Officer

नई दिल्ली, 22 मई, 2001

का.आ. 1343.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उसरी रेलवे के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[सं. एल-12012/72/96-आई और (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd May, 2001

S.O. 1343.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 21-5-2001.

[No.L-12012/72/96-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated, 15th May, 2001

PRESENT ::

Hon'ble Shri V. N. Kulkarni Bcom LLB
Presiding Officer

C.R. No. 250/97

I PARTY

Sri Kattimani,
Janatha Deposit Collector,
State Bank of India,
Azad Road,
Haliyal-581328.

II PARTY

The Branch Manager,
State Bank of India,
Haliyal Branch,
Azad Road,
Haliyal-581328.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12012/72/96 IR(B-1) dated 10-7-97 for adjudication on the following schedule.

SCHEDULE

"Whether the action of the management of State Bank of India in terminating the Services of Shri P. N. Kattimani, Janatha Deposit Collector, with effect from 18-8-1994 is justified? If not to what relief he is entitled?"

2. It is seen from the records that first party remained absent since a long time and has filed claim statement.

3. The case of the first party in brief is as under.—The claimant was appointed by the Respondent No. 1 Bank as the Banks publicity and collection representative in respect of the scheme called Janata Deposit Scheme as per the Agreement dated 3-11-1978. Thereafter identity card was issued. All the formalities were completed by the first party. The first party has worked regularly and sincerely. The order passed by the management is not correct, therefore, first party has prayed to pass award in his favour.

4. The Second party filed objection statement. The case of the first party is not correct. The first party was not engaged on permanent basis and all the allegations made by the first party are not correct. As per the agreement Bank may without any notice can terminate the agency at any time, if the deposit collector commits breach of any of the terms and conditions of the agreement. The action of the management is correct. Therefore the reference is rejected.

5. It is seen from the records that there after the first party and second party failed to appear and proceed with dispute. In the instant case both the parties are not interested and no purpose will be served if the matter is kept pending. Accordingly I pass the following order.

ORDER

The reference is rejected.

(Dictated to PA transcribed by her corrected and signed by me on 15th May 2001).

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 22 मई, 2001

का.आ. 1344.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[सं. एल-12012/72/99-आई.आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd May, 2001

S.O. 1344.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 21-5-2001.

[No. L-12012/72/99 IR(B-I)]

AJAY KUMAR, Desk Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर।
प्रकरण संख्या सी.जी.आई.टी./जे-41/99

आदेश संख्या: एल-12012/72/99 (आई.आर.) बी-1 18-6-99
जगदीश चन्द्र पुत्र श्री हरक चन्द्र, निवासी बी.पी.ओ. भीमसर
ताल, सुजानगढ़, जिला पुरू।

—प्रार्थी

बनाम

सहायक महाप्रबन्धक, स्टेट बैंक ऑफ इण्डिया, जॉनल ऑफिस
रीजन प्रथम, नेहरू प्लेस, टोंक रोड, जयपुर।

—अप्रार्थी

उपस्थित :—

प्रार्थी की ओर से श्री सुरेश कश्यप

अप्रार्थी की ओर से श्री दशपाल गर्ग

पंचाट दिनांक : 20-4-2001

पंचाट

केन्द्रीय सरकार के द्वारा निम्न विवाद उक्त आदेश के
ज़रिए औद्योगिक विवाद, अधिनियम, 1947 (जिसे बाद में
अधिनियम, 1947 कहा गया है।) की धारा-10 की उपधारा
(1) के खण्ड-ब के प्रावधानों के अन्तर्गत न्यायनिर्णयन हेतु
निर्देशित किया गया :—

“Whether the action of the management of
State Bank of India in removing the work-
man Shri Jagdish Chandra S/o Shri
Harakchandra from the service in violation

of Section 25-F of I.D. Act was justified?
not, what relief the workman is entitled
and from what date?”

प्रार्थी की ओर से स्टेटमेंट ऑफ क्लेम प्रस्तुत किया
गया, जिनमें यह उल्लेख किया गया कि उसकी नियुक्ति
विपक्षी बैंक स्टेट बैंक ऑफ इण्डिया (जिसे बाद में बैंक
कहा गया है।) की मालवीय नगर शाखा में दिनांक 1-7-94
को हुई थी। उससे सब स्टाफ का कार्य लिया जाता था
जैसे रजिस्ट्री करवाने जाना, टेलीफोन, पानी, बिजली के बिल
जमा करवाने जाना, चेक वापस करवाने जाना, कैशियर
के साथ कैश लेने जाना, जब कमी गाई नहीं होता था,
रिकार्ड रूम में रिकार्ड जमा करवाना, क्लीयरिंग लेकर जाना,
सर्विस ब्रान्च टोंक रोड पर सर्विस के दौरान जाना, रजिस्टर,
कैश बुक, लाना ले जाना, नोटों की गण्डियां सिलना, फोटो
स्टेट कराना, वाउचरों की सिनाई करवाना। प्रारम्भ में
प्रार्थी का वेतन 500 रुपये प्रतिमाह था, जिसे बढ़ाकर
700 रुपये कर दिया गया। विपक्षी बैंक ने प्रार्थी को
दिनांक 9-4-97 को बिना किसी कारण के सेवा से हटा
दिया। सेवा से हटाने से पूर्व न तो उसे एक माह का
नोटिस दिया, न छटनी का मुआवजा। उसकी सेवा समाप्ति
अधिनियम, 1947 की धारा 25-एफ का उल्लंघन कर की
गई। सेवा से हटाए जाने के बाद से वह बेरोजगार है।
प्रार्थना की गई कि उसकी सेवामुक्ति दिनांक 9-4-97 को
अवैध एवं अनुचित घोषित किया जाए व अप्रार्थी बैंक को
आवेदना दिया जाए कि वह उसे पूरे वेतन के साथ कार्य पर
ले।

अप्रार्थी की ओर से स्टेटमेंट ऑफ क्लेम का जवाब
प्रस्तुत किया गया, जिसमें आपत्ति की गई कि प्रार्थी का
विपक्षी बैंक से कर्मकार व निधोजक का कोई सम्बन्ध नहीं
रहा, अतः यह प्रकरण अधिकरण के श्रवण क्षेत्राधिकार के
अन्तर्गत नहीं आता। प्रार्थी अधिनियम, 1947 के प्रावधानों
के अन्तर्गत श्रमिक की परिभाषा में नहीं आता। प्रार्थी
विपक्षी बैंक का कभी कर्मचारी नहीं रहा। केन्द्रीय कार्य-
न्वयन समिति द्वारा स्थानीय कार्यन्वयन समिति जो कि
शाखा में होती है (जिसे बाद में समिति कहा गया है।)
को कुछ फण्ड आवंटित किए जाते हैं। समिति में बैंक के
अधिकारी व कर्मचारी सम्मिलित हैं। कैंटीन बोर्ड की
सेवाएं समिति द्वारा ली जाती हैं। कैंटीन बोर्ड बैंक में
कर्मचारियों व आगन्तुकों को चाय आदि सप्लाई करता है।
बैंक का समिति पर किसी प्रकार का नियंत्रण नहीं होता।
कैंटीन बोर्ड की सेवाएं समिति द्वारा ही ली जाती हैं, जिसमें
बैंक का कोई हस्तक्षेप नहीं होता। प्रार्थी को समिति द्वारा
कैंटीन बोर्ड के रूप में रखा गया था, अतः बैंक द्वारा उसकी
नियुक्ति का प्रश्न उत्पन्न नहीं होता। प्रार्थी ने बैंक में सब
स्टाफ का कार्य नहीं किया। वेतन का भुगतान प्रार्थी को
समिति के द्वारा दिया गया है। बैंक द्वारा प्रार्थी की सेवा
दिनांक 9-4-97 को समाप्त किए जाने व अधिनियम,
1947 की धारा 25-एफ का उल्लंघन किए जाने से इंकार
किया गया।

पक्षकारों के अधिकारों के आधार पर निम्नांकित विवाद विस्तृत बनाए गए :—

- (1) प्राथी प्रार्थी ने विपक्षी संस्थान में दिनांक 1-7-94 से दि. 9-4-97 तक कार्य किया ?
- (2) प्राथी प्रार्थी की स्थानीय कार्यन्वयन समिति द्वारा केन्टीन बाँय के रूप में रखा गया था एवं उक्त समिति के द्वारा ही मजदूरी का भुगतान किया गया एवं प्रार्थी का विपक्षी बैंक से कर्मकार होने के संबंध में कोई संबंध नहीं रहा ?
- (3) प्राथी विपक्षी संस्थान के द्वारा औद्योगिक विवाद अधिनियम, 1947 की धारा 25-एफ का उल्लंघन किया गया है ?
- (4) प्रार्थी किस सहायता को प्राप्त करने का अधिकारी है ?

प्रार्थी की ओर से क्लेम के समर्थन में स्वयं का शपथ-पत्र प्रस्तुत किया गया, जिस पर प्रतिपरीक्षा करने का अवसर अप्रार्थी के अधिवक्ता को दिया गया। प्रलेखीय साक्ष्य में प्रतिलिपि वेतन राशि का विवरण प्रदर्श डब्ल्यू-1 व डब्ल्यू-2 (एक ही हैं), प्रतिलिपि बिल बाबत रिक्शा किराया प्रदर्श डब्ल्यू-3 व डब्ल्यू-7 (प्रदर्श डब्ल्यू-3 व डब्ल्यू-7) एक ही हैं। प्रतिलिपि बिल बाबत कूलरों में पानी भरने की मजदूरी प्रदर्श डब्ल्यू-4 व डब्ल्यू-5, प्रतिलिपि बिल बाबत किराया रजिस्ट्री करवाने प्रदर्श डब्ल्यू-6 प्रस्तुत किए।

विपक्षी की ओर से ए.पी. मितल की शपथ पर बयान कराया गया। प्रलेखीय साक्ष्य में प्रतिलिपि बैंक जो प्रार्थी के नाम जारी किए गए प्रदर्श एम-1 से प्रदर्श एम-12, प्रतिलिपि प्रार्थी का बैंक में खाता खोलने का फार्म प्रदर्श एम-13, प्रतिलिपि रिम्बर्समेंट प्रदर्श-14, प्रतिलिपि चाजेंज वाउचर प्रदर्श-15, प्रतिलिपि बिल व रसीद प्रदर्श 16, 19 से 30, 33, 35, 39, 42, 44, 47, 50 से 53, 56 से 64, प्रतिलिपि वाउचर प्रदर्श एम-36, प्रतिलिपि चाजेंज वाउचर प्रदर्श एम-37, प्रतिलिपि रिम्बर्समेंट क्लेम प्रदर्श एम-38, प्रतिलिपि वाउचर प्रदर्श एम-40, प्रतिलिपि रिम्बर्समेंट क्लेम एम-41, प्रतिलिपि वाउचर प्रदर्श 43, 45, 48, 54 प्रतिलिपि रिम्बर्समेंट बिल प्रदर्श 46, 49, 55, प्रतिलिपि स्टेटमेंट एकाउण्ट संबंधी प्रदर्श एम-65 प्रस्तुत किए।

बहस सुनी गई एवं पत्रावली का अवलोकन किया गया। बनाए गए विवाद विस्तृतों का विनिश्चय निम्न प्रकार किया जाता है :—

विस्तृत सख्या 1 व 2 प्रार्थी का कथन है कि उसकी नियुक्ति विपक्षी बैंक की मालवीय नगर शाखा में नवम्बर, 94 में हुई थी। क्लेम में नियुक्ति दिनांक 1-7-94 को नियुक्ति होना टाईप की त्रुटि है। यह सब स्टाफ का कार्य करता था जो कि चतुर्थ श्रेणी कर्मचारी का कार्य था जैसे रजिस्ट्री करवाने जाना, टेलीफोन, पानी, बिजली के बिल जमा कराना, बैंक रिटर्न कराना, गार्ड उपलब्ध न होने पर

कैशियर के साथ कैश लेने जाना, रिकार्ड रूप में रिकार्ड जमा करवाना, क्लीयरिंग लेकर जाना, सविस् ब्रांच टोक रोड, पर सविस् के दौरान जाना, रजिस्टर, कैश बुक लाना, ले जाना, नोटों की गणितियां सिलना, फोटो स्टेट कराना, वाउचरों की सिलाई करना एवं रजिस्ट्रियों की प्रविष्टियां बैंक रजिस्टर में करना। दिनांक 24-6-96 को रजिस्ट्री कराने के बारे में उसने बैंक से 45 रुपये प्राप्त किए। टेलीफोन बिल जमा करवाए जाने हेतु उसने रिक्शा किराया 40 रुपये दिनांक 17-6-96 को प्राप्त किए। कूलरों में पानी भरने की मजदूरी के जरिए बिल प्रदर्श डब्ल्यू-4 व 5 प्राप्त की। रजिस्ट्री कराने हेतु रिक्शा किराया प्राप्त किया जिसकी रसीद प्रदर्श डब्ल्यू-6 है। उसे वेतन बैंकों के द्वारा मिलता था, जो प्रारम्भ में 500 रुपये प्रतिमाह था व फरवरी, 97 से उसका वेतन 700 रुपये कर दिया गया। उसका यह भी कथन है कि रामचन्द्र जो उसके समान भर्ती हुआ था, उसको स्थाई कर दिया गया व उसे कोटा भेज दिया गया। उसके बाद उसे नियुक्त किया गया। उसका यह भी कथन है कि समिति द्वारा उसकी नियुक्ति नहीं की गई। बैंक के कर्मचारी की हैसियत से उससे चाय आदि के लिए बैंक के अधिकारियों द्वारा बोल दिया जाता था, जिसका वह उल्लंघन नहीं कर सकता था। उसने केन्टीन बाँय के रूप में कभी कार्य नहीं किया। प्रतिपरीक्षा में उसने स्वीकार किया है कि बैंक ने उसे नियुक्ति-पत्र नहीं दिया। उसने एक बार तो कहा कि बैंक में वह चाय बनाने का कार्य नहीं करता था परन्तु फिर कहा कि चाय बनाने का कार्य भी वह कभी-कभी करता था। उसने यह भी स्वीकार किया है कि बैंक समिति द्वारा उसे दिया जाता था। चाय हेतु दूध, चाय की पत्ती, चीनी आदि घड़ी लेकर आता था, जिसका भुगतान बैंक करता था। उसने स्वीकार किया है कि उसने कोई बिल पेश नहीं किया, जिसका भुगतान बैंक द्वारा हुआ हो। उसने इस सुझाव को गलत बताया है कि वह बैंक की सेवा में नहीं रहा हो। उसका कथन है कि रामचन्द्र को नियुक्ति पत्र दिया गया था व उसको दैनिक मजदूरी पर कार्यरत होना बताया है। उसने इस बारे में अनभिज्ञता प्रकट की है कि उसने कोई प्रार्थना-पत्र स्थाई किए जाने बाबत प्रस्तुत किया हो।

दूसरी ओर विपक्षी के साक्षी ए.पी. मितल का कथन है कि प्रार्थी बैंक की शाखा में केन्टीन बाँय का कार्य करता था। केन्टीन समिति के अवीन कार्य करती है, जिस पर बैंक का कोई नियन्त्रण नहीं होता। समिति के अधिकारी केन्टीन बाँय को रखते हैं व वही उससे कार्य लेते हैं। केन्टीन बाँय की मजदूरी का भुगतान समिति करती है। प्रारम्भ में 500 रुपये मजदूरी दी गई बाद में 700 रुपये दिया जाना प्रारम्भ कर दिया। प्रार्थी स्टाफ के सदस्यों को चाय पिलाता था, जिसकी कीमत वह लेता था। केन्टीन बिना लाभ व बिना नुकसान के चलती है। बैंक के अधिकारियों ने प्रार्थी को नियुक्ति नहीं दी व वह बैंक का कर्मचारी नहीं रहा। उसने मैसेन्जर, कुसी, चपरासी का कार्य नहीं किया। समिति बैंक द्वारा प्रार्थी को भुगतान करती थी, जिसकी प्रतिलिपि प्रदर्श एम-1 से एम-12 है। उक्त बैंक समिति के सचिव व अध्यक्ष

द्वारा जारी किए गए हैं जिन पर "ए से बी" हस्ताक्षर प्रार्थी के हैं। प्रार्थी ने केन्द्रीय बांध के रूप में फार्म प्रदर्श एम-13 के द्वारा खाता खुलवाया था। प्रार्थी जिस बैंक के अधिकारी को चाय पिलाता था उसे बिल देकर चाय की कीमत लेता था। बैंक के अधिकारी को मनोरंजन भत्ता मिलता है। प्रार्थी ने चाय सप्लाई किए जाने बाबत बिल दिए, जिस पर बैंक अधिकारी ने प्रार्थी को भुगतान किया, जिसके बारे में प्रलेख प्रदर्श एम-14 से लेकर एम-64 प्रस्तुत किए गए हैं। उन पर कुछ पर प्रार्थी के हस्ताक्षर ए से बी हैं। समिति का खाता बैंक में था, जिसकी प्रतिनिधि प्रदर्श एम-65 है, जिसमें बैंक द्वारा भुगतान करने की प्रविष्टि है। प्रार्थी ने केन्द्रीय बांध के रूप में कार्य किया था। समिति ने ही प्रार्थी को कार्य से हटाया। उसने इस सुझाव को गलत बताया है कि प्रार्थी बैंक में रजिस्ट्री कराने, टेलीफोन के बिल जमा कराने, बैंक स्टॉक करने, बैंकिंग के साथ कैश लेने जाने व रिकार्ड रूम में रिकार्ड जमा कराने, क्लीयरिंग हेतु जाने, सविस्त्र बांच टोक रोड से सविस्त्र के दौरान जाने, कैश बुक लाने, ले जाने व नोटों की गड़ियां सिलने, फोटो स्टेट करने, घाउचरो की सिपाई करने व बैंक में रजिस्ट्रियों की प्रविष्टि का कार्य करता था। उसका कथन है कि उसकी जानकारी में नहीं है कि प्रार्थी ने रजिस्ट्रियों का इन्द्राज रजिस्टर में किया हो। अपने उसका कथन है कि प्रार्थी का उक्त कार्य था ही नहीं व उसे रजिस्ट्री की प्रविष्टि रजिस्टर में करने का कोई अधिकार नहीं था। उक्त कार्य लिपिक का है। पैटी कैश बुक व चार्ज रजिस्टर में कोई अपराधी प्रविष्टि नहीं कर सकता व उक्त रजिस्ट्री में किसी भी कर्मचारी के हस्ताक्षर नहीं होते।

प्रार्थी के विद्वान प्रतिनिधि का तर्क है कि प्रार्थी के कथन व उसके द्वारा प्रस्तुत किए गए प्रलेखीय साक्ष्य से यह प्रमाणित है कि प्रार्थी व बैंक के बीच कर्मकार व नियोक्ता के सम्बन्ध थे। उनका यह भी तर्क है कि प्रार्थी ने एक आवेदन दिनांक 5-12-2000 को प्रस्तुत किया था, जिसमें यह प्रार्थना की गई थी कि विपक्षी में पैटी कैश बुक, कैश रजिस्टर जिसमें 50 रुपये तक खर्च का इन्द्राज होता है, चार्ज रजिस्टर व रजिस्ट्रियों का इन्द्राज करने का रजिस्टर सन् 1994 से 1997 तक का प्रस्तुत कराया जाए। उक्त प्रार्थना-पत्र पर दिनांक 3-1-2001 को विपक्षी को उक्त प्रलेख प्रस्तुत किए जाने हेतु आदेश दिया गया था। विपक्षी की ओर से ए पी मित्तल बैंक के शाखा प्रबन्धक का धन्य-पत्र प्रस्तुत किया गया कि उक्त दस्तावेज उपलब्ध नहीं हो रहे हैं शाखा के कम्प्यूटाइजेशन के समय कहीं पर रखे गये या इधर-उधर हो गए, उपलब्ध होने पर उन्हें तुरन्त प्रस्तुत कर दिया जाएगा। उनका तर्क है कि ऐसी परिस्थिति में विपक्षी के विरुद्ध निष्कर्ष निकाला जाना चाहिए कि यदि उक्त रजिस्टर प्रस्तुत किए जाते तो उससे प्रार्थी के कथन की पुष्टि होती। उनका यह भी तर्क है कि रामचन्द्र नाम का कर्मचारी जिसका पूर्व में केन्द्रीय बांध के रूप में कार्य किया जाना बताया गया है, को बैंक के द्वारा नियुक्ति दी जा चुकी है। उनका तर्क है कि ऐसी दशा में प्रार्थी को केन्द्रीय

बांध मानता भेदभावपूर्ण होगा। दूसरी ओर विपक्षी के विद्वान अधिवक्ता का तर्क है कि प्रार्थी शुद्ध हस्त से अधिचरण के समक्ष नहीं आया। उसने इस तथ्य को जानबूझकर छिपाया है कि वह बैंक की शाखा में चाय बनाने का कार्य करता था। उसके द्वारा वेतन का विवरण प्रदर्श डब्ल्यू-1 प्रस्तुत किया गया है, जिसमें केन्द्रीय बांध होने का उल्लेख है। प्रार्थी स्वयं ने चाय बनाने के बिल बैंक के अधिकारियों को प्रस्तुत किए हैं, जिसका पुनर्चरण बैंक के अधिकारियों द्वारा प्राप्त किया गया है व प्रार्थी को भुगतान किया गया है, जिसका बैंक की ओर से प्रस्तुत किए गए प्रलेखों से स्पष्ट है। उनका यह भी तर्क है कि प्रार्थी स्वयं ने स्वीकार किया है कि उसे वेतन का भुगतान समिति बैंक द्वारा करती थी। प्रार्थी बैंक में चतुर्थ श्रेणी कर्मचारी के कार्य नहीं करता था व जब कभी उसने बैंक में कार्य किया उसका भुगतान प्रार्थी को पृथक से किया गया। प्रार्थी को बैंक के द्वारा कभी वेतन के रूप में कोई भुगतान नहीं किया गया। उनका तर्क है कि बैंक को कुछ दस्तावेज उपलब्ध न होने पर उनके प्रस्तुत नहीं किए जाने से यह निष्कर्ष नहीं निकाला जा सकता कि प्रार्थी बैंक का कर्मचारी था। उनका यह भी तर्क है कि मानवीय उच्चतम न्यायनय ने ए.आई.आर. 2000 सुप्रीम कोर्ट 1518 स्टेट बैंक ऑफ इण्डिया व अन्य बनाम स्टेट बैंक ऑफ इण्डिया केन्द्रीय एम्प्लॉयज रूनिट के मामले में अधिनियमित किया है कि केन्द्रीय जो कि समिति के द्वारा चलाई जाती है, के कर्मचारी बैंक के कर्मचारी के तहत नहीं आते। उनका तर्क है कि उक्त कारणों से प्रार्थी व बैंक के बीच कर्मकार व नियोक्ता का सम्बन्ध प्रमाणित नहीं होता।

उक्त तर्कों पर विचार किया गया। प्रार्थी ने क्वेश्चन में ऐसा उल्लेख नहीं किया है कि वह बैंक की शाखा में चाय सप्लाई करने का कार्य करता था। उसने अपने कथन में स्वीकार किया है कि वह चाय बनाने का कार्य भी कभी-कभी करता था। विपक्षी की ओर से प्रार्थी के चाय के सबंध में बिल प्रस्तुत किए गए हैं। बिल प्रदर्श एम-16 के द्वारा प्रार्थी ने बैंक की शाखा के उप प्रबन्धक को जनवरी, 97 माह का 125/- रुपये का बिल प्रस्तुत किया है जिस पर भुगतान प्राप्ति के ए से बी हस्ताक्षर ए.पी. मित्तल ने प्रार्थी के होना बताया है। इसी प्रकार प्रदर्श एम-19 से लेकर प्रदर्श एम-30, एम-39, एम-42, एम-44, एम-47, एम-50 से एम-53, एम-56 से एम-64 के बिल बैंक के अधिकारियों को चाय व्यय बाबत प्रस्तुत किए गए हैं, जिन पर ए से बी हस्ताक्षर ए.पी. मित्तल के द्वारा प्रार्थी के होना बताया गया है। रसीद प्रदर्श एम-16, एम-33, एम-35, एम-39 प्रार्थी के द्वारा चाय व्यय बाबत भुगतान प्राप्ति के बारे में है, जिन पर ए से बी, हस्ताक्षर ए.पी. मित्तल के द्वारा प्रार्थी के होना बताया गया है। प्रार्थी की ओर से उक्त बिलों व रसीदों पर अपने हस्ताक्षर होने से इन्कार नहीं किया गया है। इस प्रकार यह प्रमाणित है कि प्रार्थी ने बैंक की शाखा मालवीय नगर में चाय सप्लाई की जिसका भुगतान न प्राप्त किया। प्रार्थी के वेतन भुगतान के विवरण प्रदर्श डब्ल्यू 1, जो प्रार्थी द्वारा प्रस्तुत किया गया है, में प्रार्थी के हस्ताक्षर 'केन्द्रीय बांध' के कालख

में किए गए हैं। बैंक प्रदर्श एम-1 से एम-12 जो कि प्रार्थी को वेतन भुगतान के बारे में है जिन पर ए से बी हस्ताक्षर ए.पी. मित्तल ने प्रार्थी के होना प्रमाणित किया है समिति के द्वारा जारी किए गए हैं। प्रार्थी स्वयं ने भी स्वीकार किया है कि वेतन का भुगतान बैंक के द्वारा होता था, जो समिति देती थी। प्रार्थी के द्वारा खता बैंक की शाखा में बतौर केटीन बाँध के खोला गया है बिल प्रदर्श एम-16 में प्रार्थी स्वयं ने अपने आप को केटीन बाँध होने को उल्लेख किया है। इस प्रकार प्रार्थी का यह कथन कि वह समिति को जानता ही नहीं है, विश्वास किए जाने योग्य नहीं है। यदि प्रार्थी बैंक का कर्मचारी होता तो उसे वेतन बैंक के द्वारा दिया जाता कि समिति के द्वारा। प्रार्थी को प्रदर्श डब्ल्यू-3 के द्वारा टेलीफोन बिल जमा कराने का रिक्शा किराया दिनांक 2/6/96 को बैंक द्वारा भुगतान किया गया है। इसी प्रकार दिनांक 1/5/96, 2/5/96, 3/5/96 को कूलरों में पानी भरने हेतु क्रमशः 15-15 रुपये कुल 45/- रुपये का भुगतान किया गया है। दिनांक 24/10/96 को रजिस्ट्री कराने हेतु 45/- रुपये रिक्शा किराया दिया गया है। यदि प्रार्थी बैंक का कर्मचारी होता तो उसे कूलरों में पानी भरने हेतु "क्योंकर" मजदूरी दी जाती। केवल टेलीफोन बिल जमा कराने व रजिस्ट्री करवाने हेतु रिक्शा किराया दिये जाने के आधार पर यह नहीं कहा जा सकता कि प्रार्थी बैंक का कर्मचारी हो गया। अधिक से अधिक यह निष्कर्ष निकालता है कि प्रार्थी ने केटीन बाँध के रूप में कार्य करते हुए बैंक के लिए उसने उक्त कार्य किया व कूलरों में 3 दिन पानी भरने की मजदूरी उसने बैंक से प्राप्त की। अधिक से अधिक प्रार्थी व बैंक के बीच केटीन बाँध होते हुए आंशिक रूप से उक्त अवधि के लिए कर्मकार व नियोजक के सम्बन्ध होना कहा जा सकता है। ए.पी. मित्तल, शाखा प्रबन्धक ने अपने कथन में स्वीकार किया है कि प्रार्थी बैंक का कोई कार्य नहीं करता था। पैटी कैश बुक चार्ज रजिस्टर में में कोई चपरासी प्रविष्टि नहीं कर सकता व उक्त रजिस्टर में किसी भी कर्मचारी के हस्ताक्षर नहीं होते। इसके विपरीत उक्त कथन के खण्डन में प्रार्थी की ओर से कोई साक्ष्य प्रस्तुत नहीं की गई, अतः ए.पी. मित्तल के उक्त कथन पर अविश्वास किए जाने का कोई कारण प्रतीत नहीं होता। ऐसी परिस्थितियों में पैटी कैश बुक रजिस्टर, चार्ज रजिस्टर व रजिस्ट्री करने के इन्द्राज का रजिस्टर बैंक की ओर से उसके उपलब्ध न होने की दशा में प्रस्तुत नहीं किए जाने के कारण बैंक के विरुद्ध कोई विपरीत निष्कर्ष निकालना उचित नहीं होगा। ए.पी. मित्तल ने प्रार्थी के द्वारा बताया गए सब स्टाफ के अन्य कार्य किए जाने से इंकार किया है। यह विवादित नहीं है कि रामचन्द्र पूर्व में केटीन बाँध का कार्य करना था, जैसा कि स्टेटमेंट प्रदर्श डब्ल्यू 1 में उल्लेख है। बैंक के द्वारा उसे नियुक्ति पत्र देना बताया गया है। प्रार्थी का कथन है कि वह उसी शक्ति दैनिक मजदूरी पर कार्यरत था। प्रार्थी दैनिक मजदूरी पर कार्यरत था ही नहीं बल्कि उसे समिति के द्वारा मासिक भुगतान होता था। रामचन्द्र का कोई नियुक्ति पत्र प्रस्तुत नहीं किया गया। प्रार्थी द्वारा प्रस्तुत क्लेम में रामचन्द्र के बावत कोई

उल्लेख नहीं किया गया कि उसको नियुक्ति किस प्रकार की गई। ऐसी दशा में रामचन्द्र की नियुक्ति किन परिस्थितियों में की गई, कोई निष्कर्ष नहीं निकाला जा सकता। रामचन्द्र की नियुक्ति के आधार पर यह निष्कर्ष नहीं निकाला जा सकता कि प्रार्थी समिति का कर्मचारी न होकर बैंक का कर्मचारी था। उक्त विवेचन से यह निष्कर्ष निकलता है कि प्रार्थी को नवम्बर, 1994 से दिनांक 9/4/97 तक समिति द्वारा केटीन बाँध के रूप में नियोजन में रखा गया व उसके द्वारा ही भुगतान किया गया। उक्त अवधि में प्रार्थी के द्वारा बैंक हित में 3 दिन तक कूलरों में पानी भरने का कार्य किया गया व 1 दिन बैंक की ओर से रजिस्ट्री कराने का व 1 दिन टेलीफोन के बिल जमा कराने का कार्य किया गया। इस अवधि के अतिरिक्त प्रार्थी व बैंक के बीच कर्मकार व नियोजक के सम्बन्ध नहीं रहे व प्रार्थी व समिति के बीच ही यह गवम्बर् 94 से 9/4/97 की अवधि में कर्मकार व नियोजक के सम्बन्ध रहे व प्रार्थी ने समिति के अधीन बतौर केटीन बाँध का कार्य किया, माननीय उच्चतम न्यायालय ने ए.आई.आर. 2000 सुप्रीम कोर्ट 1518 पर प्रकाशित मामले में यह अभिनिर्धारित किया है कि समिति द्वारा संचालित केटीन के कर्मचारी बैंक के कर्मचारी के तहत नहीं आते, क्योंकि बैंक का केटीन संचालित करने का कार्य किसी संस्था के तहत अवधि विधिक दायित्व नहीं है। ए.पी. मित्तल के कथन कि समिति पर बैंक का कोई नियन्त्रण नहीं होता व केटीन बाँध का मजदूरी का भुगतान समिति ही करती है, के खण्डन में कोई साक्ष्य प्रस्तुत नहीं की गई। ऐसी दशा में यही निष्कर्ष निकलता है कि समिति का बैंक ने पृथक् अस्तित्व है व समिति के द्वारा नियोजित केटीन बाँध बैंक के कर्मचारी की श्रेणी में नहीं आते।

विन्दु संख्या 3:— यह प्रमाणित नहीं हो पाता है कि दिनांक 1/7/94 से 9/4/97 के बीच प्रार्थी व बैंक के बीच कर्मकार व नियोजक के सम्बन्ध रहे। ऐसी दशा में दिनांक 9/4/97 को बैंक के द्वारा प्रार्थी की सेवा समाप्त करने का प्रश्न उत्पन्न नहीं होता। प्रार्थी की ओर से यह भी प्रमाणित नहीं है कि उसने बैंक में बतौर कर्मकार तयकथित सेवा समाप्त के पूर्व के वर्ष में 240 दिन कार्य किया। ऐसी दशा में अधिनियम, 1947 की धारा 25-एफ को प्रावधान आकृष्ट नहीं होते व बैंक के द्वारा अधिनियम, 1947 की धारा 25 एफ का उल्लंघन किया जाना प्रमाणित नहीं होता।

विन्दु संख्या 4:— प्रार्थी की बैंक के द्वारा अधिनियम, 1947 की धारा 25-एफ का उल्लंघन कर सेवा समाप्त किया जाना प्रमाणित नहीं है, अतः प्रार्थी कोई सहायता प्राप्त करने का अधिकारी नहीं है।

पंचाट की प्रतिलिपि केन्द्रीय सरकार को अधिनियम, 1947 की धारा 17 की उपधारा (1) के अन्तर्गत प्रकाशित प्रेषित की जाए।

ह./-

पीठासीन अधिकारी

नई दिल्ली, 24 मई, 2001

का. आ. 1345.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार गोलकोंडा ग्रामीण बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण। हैदराबाद के पंचाट को प्रकटित करती है, जो केन्द्रीय सरकार को 3-5-2001 को प्राप्त हुआ था।

[सं. एल.-12011/43/98-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th May, 2001

S.O. 1345.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-I Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Golconda Grameena Bank and their workman, which was received by the Central Government on 23-5-2001

[No. L-12011/43/98-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri Syed Abdullah, B.Sc., B.L., Industrial Tribunal-I.

Dated : 7th May of 2001

INDUSTRIAL DISPUTE NO. 38 OF 1999

BETWEEN

General Secretary, Golconda Grameena Bank Workers Union, 1-8-565/5, RTC Cross Roads, Hyderabad. ... Petitioner/Workman

AND

Chairman, Golconda Grameena Bank, Head Office, Dilsukhnagar, Hyderabad. ... Respondent/Management.

APPEARANCES :

Sri P. B. Vijaya Kumar, Advocate for the Petitioner.
Sri S. Udyachal Rao, Advocate for the Respondent.

AWARD

The Government of India, Ministry of Labour, by its letter No. L-12011/43/IR(B-I) has referred this dispute under Clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) for adjudication on the following issues :

"Is the Golconda Grameena Bank justified in denying Daftari Allowance to messengers working the branches ? If not, what relief they are entitled to?"

2. Both the parties have appeared and filed their respective pleadings.

The petitioner-union in its claim statement averred as follows : The main issue in this dispute is on account of the denial of Daftari Allowance to the messengers working in Golconda Grameena Bank and its branches. The Golconda Grameena Banks have been established throughout the country as per Regional Rules Bank Act, 1976 (Act 21/76). The Regional Rural Banks operated on the same lines as that of all Commercial Banks including the Nationalised Banks performing the same duties with responsibilities by both the officers and other staff. The duties of the staff of these banks

are to implement loans and advances to small and marginal farmers and agricultural labourers, individuals or groups, Co-operative societies including Agricultural Marketing Societies etc. which are similar to the duties and responsibilities of Regional Rural Bank Officers and employees throughout the Country. As per Section 17 of the RRB Act the terms and conditions are laid for the appointment of officers and employees like various nationalised and commercial banks. The officers and employees of Regional Rural Banks throughout the country are not similarly placed as that of Commercial Banks and Nationalised Banks with regard to privileges which is an unfair discrimination and is a violation of article 14 and 16 of the constitution of India, so also oppose to the principles of equal pay for equal work. Some writs W.P. No. 7149 and 7150/82 and 132/84 were filed in the Apex Court as to the discrimination in payment of wages on the principle of equal pay for equal work and the said Writ Petitions were disposed of on 1-9-87 in which a direction was given to constitute a National Industrial Tribunal presided over by a retired Chief Justice of High Court, decide and to make an Award. As per notification 235 dated 26-11-87 the National Industrial Tribunal was constituted to adjudicate the dispute relating to the anomaly in payment of salary and other allowances etc., of the officers and employees of RRB's. An Award was passed on 20-5-90 which is binding on the parties. The Officers and employees of RRB are entitled to all allowances and other benefits on par with the benefits of the officers and employees of sponsor banks. A Chetanya Bank which is a Grameena Bank has been paying is extended by the Daftari allowance to the Sub-staff workers on the basis of the circular 111/Ref. No. 3/37 dated 3-8-92. Likewise many Grameena Banks extending the said benefits. But unfortunately the respondent management is adopting unfair labour practice and depriving the messengers working on the Grameena Banks.

3. The point for adjudication is whether the messengers of the Golconda Grameena Bank and its branch office are entitled for the Daftari Allowance as prayed for?

On behalf of the employees of the Golconda Grameena Bank the Union Joint Secretary was examined as WW1 and he reiterated the factual aspects as to the eligibility of Daftari Allowance by the messengers working in Golconda Grameena Bank and non payment of it inspite of an award passed by the National Industrial Tribunal and a circular issued by the Nabard Bank for its implementation, WW1 has deposed that the Daftari Allowance is to be paid at Rs. 119 p.m. to each employee with proportionate dearness allowance thereon to all the Class IV employee working in the Grameena Bank and its Branches w.e.f. 3-8-92. He filed Ex. W1 circular issued by the Nabard Bank for implementation of the Award by the Management's. According to him Grameena Bank is a sponsored bank of (SBH) established to function in Rural Areas. The sponsor Bank (SBH) Class IV employees are also drawing Daftari Allowance, where as the same is not extended to Grameena Bank Class IV employees and that there are 16 such branches throughout the A.P. State, Ex. W2 is produced to show that another Chetanya Grameena Bank of Guntur in paying Daftari Allowance to Class IV employees.

5 The respondents and their standing counsel have remained absent on all the dates of hearing and on 4-5-2001, as such the respondent 1 and 2 were set aside.

6. From the oral evidence of W1 coupled with Ex. W1 and W2 it is evident that the employees working in RRB are eligible to draw Daftari Allowance on par with Class IV employees drawing in other banks and by sponsor Bank (SBH) Class IV staff. There cannot be any discrimination in between the equals and such a discrimination amounts to violation of Article 14 and 16 of the constitution of India. Apart from it on the principles of equal pay for equal work and employees of Golconda Grameena Bank are also eligible for all the allowances claimed by them when the National Industrial Tribunal has decided the question in issue and passed an Award on 20-4-90 and in pursuance of it Ex. W1 circular was issued. The respondent 1 and 2 are bound to implement the same and they cannot delay the implementation. Any delay would amount to unfair labour practice and discrimination.

7. In the Counter the respondent put forth the contentions that the excess subordinate staff were recruited as Messenger-cum-Sweeper but they are not discharging duties of Sweeper. The duties of Sweeper are being discharged by the individuals exclusively appointed for the said purposes. Daftary Post in the Sponsor-Bank is of separate cadre specifically designated as such to perform extra duties along with duties of peons. Further the level and type of business handled by the branches of the sponsor bank is entirely different from that handled by the branches of the Bank as on date there is no position/post of Daftary either in Head Office or any Branch Offices and warrant creation of post of Daftary so long as Daftary post is not created question of paying the Daftary Allowance it does not arise. There is no necessity to create Daftary post in Grameena Banks. It is not mandatory to follow the guide lines of Nabard. In the Award dated 30-4-90 given by the National Industrial Tribunal it has directed to have equation of posts and fixation of pay, allowances and other benefits of the employees of Grameena Banks which matter has to be decided by the Central Government in consultation with such authorities as it may consider necessary. The Government of India constituted Equation Committee to make recommendations with regard to equation of posts in Regional Rural Banks vis-a-vis in the sponsored Banks. The committee submitted the report to Government of India and on that instruction were issued read with the equation committee letter dated 22-2-91, to the messenger-cum-Sweeper working in the respondent banks are not eligible for Daftary Allowance. Hence reference may be rejected.

8. The respondents have not placed any evidence in proof of their assertions as such the assertion pales into insignificance. The evidence placed by the petitioner union is satisfactory to grant the relief as per Ex. W1 guidelines.

9. In the result an Award is passed directing the respondent 1 and 2 to implement Ex. W1 circular in releasing Daftary Allowance due to Class-IV of Grameena Banks working in A P State from the date of their eligibility. The Award shall be implemented within 30 days of the publication of the Award.

Dictated to the Shorthand Writer, transcribed by him corrected and given under my hand and seal of this Tribunal on this 7th day of May 2001.

SYED ABDULLAH, Industrial Tribunal-I

Appendix of Evidence :

| | |
|---|--|
| Witnesses Examined for Petitioner : | Witness Examined for the Respondent : |
| WW1 N. Ravii Kumar | NIL |
| Documents marked for the Petitioner/Workman : | |
| Ex. W1/20-3-93 Circular issued by NABARD. | |
| Ex. W2/3-8-92 Payment of Daftary allowance to Sub-Staff member in Chetanya Grameena Bank Circular No. 3/37. | |

Documents marked for the Respondent/Management :
(set ex parte) NIL

नई दिल्ली, 4 मई, 2001

का. आ. 1346—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दक्षिणी रेलवे के प्रबंधन के संबंध में जहाँ और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण तमिलनाडु चैम्बर के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-5-001 को प्राप्त हुआ था।

सं. एल.-41012/70/99 आई आर (बी-1)
सं. एल.-41012/69/99 आई आर (बी-1)
सं. एल.-41012/69/99 आई आर (बी-1)
सं. एल.-41012/71/99 आई आर (बी-1)

सं. एल.-41012/82/99—आई आर (बी-1)
सं. एल.-41012/78/99 आई आर (बी-1)
सं. एल.-41012/79/99 आई आर (बी-1)
सं. एल.-41012/76/99 आई आर (बी-1)
सं. एल.-41012/75/99 आई आर (बी-1)
सं. एल.-41012/73/99 आई आर (बी-1)
सं. एल.-41012/72/99 आई आर (बी-1)

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th May, 2001

S.O. 1346.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Tamil Nadu, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Southern Railway and their workman, which was received by the Central Government on 23-5-2001.

[No. L-41012/70/99-IR(B-I)
L-41012/69/99-IR(B-I)
L-41012/68/99-IR(B-I)
L-41012/71/99-IR(B-I)
L-41012/82/99-IR(B-I)
L-41012/78/99-IR(B-I)
L-41012/79/99-IR(B-I)
L-41012/76/99-IR(B-I)
L-41012/75/99-IR(B-I)
L-41012/73/99-IR(B-I)
L-41012/72/99-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU,
CHENNAI-104

Friday, the 20th day of April, 2001

PRESENT :

Thiru S. R. Singharavelu, B.Sc.B.L., Industrial Tribunal.
Industrial Dispute Nos. 114 of 1999 to 124 of 1999

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Dispute Act, 1947 between the Workmen and the Management of Southern Railway, Tiruchirapalli Division, Tiruchirapalli-620001.)

In I.D. No. 114/99

BETWEEN

Thiru M. Leo,
22, Amalarpuram Colony,
Usman Ali Street,
T.V.S. Tolgate,
Tiruchirapalli-20.

AND

The Divisional Railway Manager,
Southern Railway,
Tiruchirapalli Division,
Tiruchirapalli-620001.

REFERENCE :

Order No. L-41012/70/99-IR(B-I) dated 12-7-99,
Ministry of Labour, Government of India, New
Delhi.

In I.D. No. 115/99

BETWEEN

Sh. R. S. Ravichandran,
No. 59, TVR Street,
Kamaraj Nagar Air Port,
Tiruchirapalli-7.

AND

The Divisional Railway Manager,
Southern Railway,
Tiruchirapalli Division,
Tiruchirapalli-620001.

REFERENCE :

Order No. L-41012/69/99-IR(B-I) dated 12-7-1999,
Ministry of Labour, Government of India, New
Delhi.

In I.D. No. 116099

BETWEEN

Thiru S. Logendran,
61-B Kallar Street,
Rallukuzhi,
Tiruchirapalli-20

AND

The Divisional Railway Manager,
Southern Railway,
Tiruchirapalli Division,
Tiruchirapalli-620001.

REFERENCE :

Order No. L-41012/68/99-IR(B-I) dated 12-7-1999,
Ministry of Labour, Government of India, New
Delhi.

I.D. No. 117/99

BETWEEN

Shri L. Dharmaraj,
49/31, Thiru Nagar 1st Street,
Karumantapam,
Tiruchirapalli-620001.

AND

The Divisional Railway Manager,
Southern Railway,
Tiruchirapalli Division,
Tiruchirapalli-620001.

REFERENCE :

Order No. L-41012/71/99-IR(B-I) dated 13-7-1999,
Ministry of Labour, Government of India, New
Delhi.

In I.D. No. 118/99

BETWEEN

Smt. R. Lakshmi,
47, Renganathapuram,
Officers' Colony,
Puthur,
Tiruchirapalli-17.

AND

The Divisional Railway Manager,
Southern Railway,
Tiruchirapalli Division,
Tiruchirapalli-620001.

REFERENCE :

Order No. 41012/82/99-IR(B-I), dt. 13-7-99, Ministry
of Labour, Government of India, New Delhi.

In I.D. No. 119/99

BETWEEN

Shri N. Raj,
No. 2 Jeeva Street,
Sangaliandapuram,
Tiruchirapalli.

AND

The Divisional Manager,
Southern Railway,
Tiruchirapalli Division,
Tiruchirapalli-620001.

REFERENCE :

Order No. L-41012/78/99-IR(B-I) dated 13-7-99,
Ministry of Labour, Government of India, New
Delhi.

In I.D. No. 120/99

BETWEEN

Sh. A. Rengaraju,
30 Nehru Street,
Ulganathapuram,
Tiruchirapalli-20.

AND

The Divisional Railway Manager,
Tiruchirapalli Division,
Southern Railway,
Tiruchirapalli-620001.

REFERENCE :

Order No. L-41012/79/99-IR(B-I) dated 13-7-99,
Ministry of Labour, Government of India, New
Delhi.

In I.D. No. 121/99

BETWEEN

Shri P. Francis,
1/815, Thiruvalluvar Nagar,
Oil Mill,
Katur,
Thiruchirapalli-19.

AND

The Divisional Railway Manager,
Southern Railway,
Tiruchirapalli Division,
Tiruchirapalli-620001.

REFERENCE :

Order No. L-41012/76/99-IR(B-I) dated 13-7-99,
Ministry of Labour, Government of India, New
Delhi.

In I.D. No. 122/99

BETWEEN

Shri J. Jeeva,
S/o Vellakannu Mudikandam,
E. Pudur (Via) Nagamangalam PO,
Tiruchirapalli.

AND

The Divisional Railway Manager,
Tiruchirapalli Division,
Southern Railway,
Tiruchirapalli-620001.

REFERENCE :

Order No. L-41012/75/99-IR(B-I) dated 13-7-99,
Ministry of Labour, Government of India, New
Delhi.

In I.D. No. 123/99

BETWEEN

Shri P. Shanmugam,
53A, T.V.K. Street,
Kamaraj Nagar,
Air Port,
Tiruchirapalli-7.

AND

The Divisional Railway Manager,
Southern Railway,
Tiruchirapalli Division,
Tiruchirapalli-620001.

REFERENCE :

Order No. L-41012/73/99-IR(B-I) dated 13-7-1999,
Ministry of Labour, Government of India, New
Delhi.

In I.D. No. 124/99

BETWEEN

Shri M. Sirajudeen,
70 Muslim 1st Street,
Khajamalai,
Tiruchirappalli-23.

AND

The Divisional Railway Manager,
Southern Railway,
Tiruchirappalli Division,
Tiruchirappalli-620001.

REFERENCE :

Order No. L-41012/72/99-IR(B-I) dated 13-7-99,
Ministry of Labour, Government of India New
Delhi.

These disputes coming on this day for final hearing upon perusing the reference, Claim and Counter statements and all other material papers on record and upon hearing the arguments of Thiruvallalgar A. Purthasarthi and A. Varadarajan, authorised representatives for the Workmen in all the disputes and of Thiru G. Kalyanasundaram, advocate appearing for the Management, this Tribunal passed the following Common.

AWARD

The Government of India has referred the following issue for adjudication by this Tribunal:

"Whether the action of the management of Southern Railway, Tiruchirappalli Division in terminating the services of the petitioners with effect from 3-10-1994 is legal and justified? If not to what relief they are entitled?"

2. In all the disputes separate Claim Statements were filed and the Common Averments made therein are as follows:

The petitioners i.e. Thiruvallalgar (1) M. Leo, (2) R. S. Ravichandran, (3) S. Logendran, (4) K. Dharmaraj, (5) Mrs. R. Lakshmi, (6) N. Raj, (7) A. Rangaraju, (8) P. Francis, (9) Mrs. J. Veeva, (10) P. Shanmugam and (11) M. Sirajudeen, joined the services of the respondent canteen at Tiruchirappalli (hereafter called as Tiruchi) Divisional Railway Managers Office Complex respectively on 6-8-1986, 15-5-87, 8-6-87, 15-5-87, 1-4-81, 10-8-92, 10-8-92, 4-8-86, 29-7-91, 10-8-92, 4-10-89 and they were placed on non-employment from 3-10-1994. The petitioners moved the Central Administrative Tribunal, at Chennai immediately on non-employment. The Petitioners have withdrawn the said applications, due to some reasons, with liberty to raise Industrial Dispute on 11-8-1997. The petitioners raised dispute under Section 2A of the Industrial Disputes Act 1947, before the Regional Labour Commissioner (Central) at Chennai on 11-9-98 and the Labour Enforcement Officer (Central) at Tiruchi, initiated conciliation and the same ended in failure. The canteen is one provided and subsidised by the Railways as Welfare Measure in line with that of Para. 2130 of the Indian Railway Establishment Manual. It is a recognised Non-statutory canteen by the railways at Tiruchirappalli. The sanctioned strength of the canteen by the railways to the Canteen is 28 employees. All Non-statutory canteen workers filed yet another Writ Petition before the Supreme Court in 1982. It was numbered as W.P. Nos. 2275 to 2286 of 1982 (also other cases). The Hon'ble Supreme Court in an interim order passed and directed the railways to pay the railway scales of wages to the workers as Interim Relief w.e.f. 1-4-1982. This was implemented. The Hon'ble Supreme Court of India passed the final judgements in W.Ps referred to above on 27-2-1990. The Court ordered to treat the canteen workers of all non-statutory canteens as employees of the Railways from 1-4-1990. The full text of the Judgement reported in 1990-II-LLN page 197. The Railway officials at Tiruchi, took action, to take over the canteen from the Co-operative. The canteen was under the control of a Special Officer from July 1991 to

1993, since the Government of Tamil Nadu dissolved all the elected Boards, as such the Canteen too fall under the Special Officer. In all these years petitioner continued to be in service. The petitioners were not paid wages for about 13 months. The Railway administration took over the canteen in full, after dissolving the Co-operatives. On 9-9-1993, the Railway Administration paid the due wages too. Suddenly on 3-10-94 the railway officials removed the petitioners from service, and said it was a retrenchment. Hence this dispute. The action of the Railway administration, to terminate the petitioners was not correct and legally not sustainable one, the Grounds are as under:

- (a) The petitioner continued to be in service.
- (b) The canteen was subsidised one, as such the railway has control over the canteen.
- (c) The Judgement of the Supreme Court only said that the canteen workers are to be treated as railway workers, there was no classification in it.
- (d) Even after the judgement of the Court on 27-2-1990 and the date of effect given by Supreme Court, i.e. 1-4-90, the petitioners allowed to continue in employment, neither the special officer nor the railway officials given any notice to the petitioners.
- (e) The petitioners were allowed to work till 3-10-1994.
- (f) After non-employment of the petitioners, the railway administration brought men from other canteens to the canteen in the dispute.
- (g) The Railway administration said before the Conciliation officer, that the petitioners' non-employment as retrenchment. But they failed to follow the necessary legal requirements as contemplated in the I.D. Act, 1947.
- (h) The Southern Railway in other canteens, similarly placed casuals were all regularised.
- (i) There were three typed of Class DI workers i.e.
 - (a) Extra Labour popularly known as ELR,
 - (b) CPC scale workers.
 - (c) regular workers. Since the canteen also adopted the same principles, the canteen casuals need to be absorbed as per practice in existence.
- (j) The Practice of absorbing the casuals is not a new system to railways. Even in the case of Canteen casuals, that too after 1-4-90, was considered for regularisation.
- (k) The denial of regularisation to petitioners are against the Natural justice and as well the applicants Fundamental right.

The petitioners pray this Tribunal, may be pleased to direct the respondent to reinstate the petitioners as regular employees in the post holding before their non-employment in the canteen, with backwages, all other attendant benefits, and continuity of service.

3. In all the disputes Separate Counters were filed and the Common averments made therein are as follows:

The petitioners have not filed any proof to show that they were employed on 15-5-1987 in the erstwhile canteen management as regular employees. The said canteen is a Non-statutory Recognised canteen was run by the Managing Committee consisting of the Railway employees as Directors. The Pay and Allowances of the employees of the canteen were being met by subsidy to the tune of 70 per cent from the Railway administration and the balance of 30 per cent was met by the Canteen Management till 1-4-90. From 1-4-90 the regular employees of the subsidised non-statutory canteen have been treated as Railway servants in terms of Railway Board's letter No. E(W)19/CNI-7(II) dated 18-5-1990, consequent on the implementation of the Hon'ble Supreme Court's judgement dated 27-2-1990 in Writ petition Nos. 2275 to 2286/1982 in MMR Khan and others Vs. Union of India case. The pay and allowances in respect of the regular employees of the subsidised canteen are being paid by the Railway administration

w.e.f. 1-4-90 and subsidy provided earlier has been stopped. The salary to the petitioners on daily rate basis were paid by the canteen management from the sales amount. The Special Officer under the control of the Deputy Registrar of Co-op Societies, Trichy took over the canteen management in July 1991 and the canteen management was with the State Government Co-operative Department from July 1991 to 9th September 1993. Subsequently, the Railway administration took over the canteen from the Co-operative Special Officer on 9-9-93 with liabilities to the extent of Rs. 2,79,337.15 p. The canteen was revived since 15-8-94, taking financial assistance from Southern Railway Women's Welfare Organisation, Trichy. It was felt very difficult to pay the wages to the daily casual labourers. Further the canteen is not eligible for any subsidy from the Railway administration. The management has come to the conclusion to retrench the service of the daily rated casual labourers forthwith. In the said regard, the petitioners and alike other casual labourers were given notice, one month pay in lieu of notice period as required in accordance with the provision of the I.D. Act 1947. The petitioners had refused to accept the notice and payment arranged for Rs. 4300 on 3-10-94. As per the Honble High Court Judgement reported in I L.L.U. 1986 page 334 it has been held that "Keeping the amount ready in the Office of the employer is sufficient compliance." Therefore the respondent has followed the provisions of the I.D. Act in retrenchment of the petitioners. The management in order to reduce the loss, had no other option except to retrench the daily rated casual labourers who were engaged by the erstwhile Canteen management. Where there is no specific mention about the absorption of casual labour either in the dictum of the Hon'ble Supreme Court or in the Railway Board letter dated 18-5-90 issued on the base of Apex Court Judgement, Hence the plea of the petitioners to extend the benefit as envisaged in the dictum of the Hon'ble Supreme Court in MMR's Khan case does not arise. The petitioner along with other such retrenched daily rated casual labourers have filed Nos. O.A./1186/94, 1205/94 and 1405/94 on the file of the Central Admn. Tribunal, Madras praying to quash the Impugned order of retrenchment and for consequential benefits and the Tribunal dismissed the Original Application vide Common Order dated 11-8-97 as having been withdrawn. The petitioners have been engaged as a daily rated casual labour in the Staff Co-operative Canteen by the then Management Committee and it will not imply on the Railway Administration for employment in Railway. There is no ground for reinstatement of the petitioners. The respondent prays to dismiss the above petitioners.

4. On behalf of petitioners, Ex. W1 to W21 were marked by consent. On behalf of Respondent/Management, MW1 Thiru N.M. Jayasekar, has been examined and Ex. M1 to M9 were marked.

5. The Point for consideration is whether the action of the Management of Southern Railways, Tiruchirappalli Division in terminating the services of the petitioners w.e.f. 3-10-94 are legal and justified? If not to what relief they are entitled?

6. The Point : The 11 petitioners in the above Industrial Disputes are workers of Canteen attached to the Railway administration at D.R.M. Office Complex, Trichy called General Offices Staff Co-operative Canteen. Usually the canteens are provided and maintained in Railways, as a measure of welfare, to cater the needs, of Railway employees. The said canteens are classified as (a) Statutory canteens (b) Non-statutory Recognised Canteens (c) Non Statutory Non-Recognised Canteens. Statutory canteens were provided and maintained in Factories of Railways as per Section 46 of the Factories Act 1948. There is a manual called Indian Railway Establishment Manual which deals with the Canteens and explain the administration thereof. The canteens in this case is a non-statutory recognised canteen (called N.S. Canteen).

7. All the 11 petitioners in the above Industrial disputes were recruited as Casual labourers on 6-8-86, 18-5-87, 8-6-87, 15-5-87, 1-4-81, 10-8-92, 4-8-86, 1-2-90, 10-8-92, 28-7-91 and 10-8-92 respectively. They were all terminated on 3-10-1994. Even according to para 4 of the Counter of the Respondent/Management a sum of Rs. 4300 to each of the petitioner was sent after terminating them with effect from the afternoon of 3-10-94; that the petitioners refused

to accept the termination notice as well as the payment of Rs. 4300 arranged in accordance with law. The management also mentioned in their counter that keeping the above said amount ready in the Office of the employer by itself is sufficient compliance of the provisions of the I.D. Act and the sine quo non conditions preceding retrenchment.

8. Now the Learned Representative for the petitioners contend that the termination or retrenchment as the case may be is not in accordance with law. He also cited 1990 II LLN p. 197 to substantiate his case that even the employees of non-statutory recognised Canteen shall have to come directly under the employment of the Railway Administration.

9. In this connection Ex. W1 is the Claim of the workmen/petitioners made in a Complaint before the Regional Labour Commissioner; what they have mentioned therein was that these petitioners were working as Cleaners from 8-6-87 continuously without any break in the above said canteen; that the Railway Administration was not prepared to recognise them as its employees; that they were treated only as Casual labourers for daily wages with no other benefit. They also contended that in respect of framing policies including purchase of edible items were determined by the Railway authorities of the Canteen and yet the employees of Canteen were told that they were only the employees of Co-operative Society and not the Railways. The workers felt it necessary to implement the Verdict given in 1990 II LLN p. 197 and made this complaint before the Regional Labour Commissioner. Ex. W1 is the copy of such complaint. Ex. W2 is the Counter filed by the Railway Administration, wherein they have contended that originally the said canteen which is a Non-statutory Recognised Canteen was run by the Managing Committee consisting of Railway employees as Directors; that the Pay and Allowance of the employees of the Canteen were made by subsidy of 70 per cent by Railway Administration and 30 per cent was made by the Canteen management till 1-4-90. From 1-4-90 the regular employees of the canteen were treated as Railway servants in terms of Supreme Court Verdict dated 27-2-90 in the above cited Case Law 1990 II LLN p. 197. It was said that the Special Officer of the Co-operative Society took over the management of the canteen in July 1991 and again upon liquidation of the society the Railway administration took over the Canteen on 9-9-93 with liabilities to the extent of Rs. 2.80 lakhs and that since the canteen is on loss no remedy could be provided. Upon the above contention made on either side through Ex. W1 and W2 there was a report of Failure of Conciliation under Ex. W3.

10. Now the petitioners want status of employee directly under the Railway Management. That apart they also contend that the retrenchment was not in accordance with the provisions of Industrial Dispute Act. So far as the Payment of Statutory sum preceding retrenchment, the tender of Rs. 4300 made by the management to the petitioner and the later's refusal was not repudiated. There was also a notice to that effect through Ex. M9. May be that the retrenchment procedure was correctly followed. Another procedure to be followed in implementing retrenchment even if it was considered necessary is that the person who had 'last come shall have go first'. For Practising the same, there should be a Seniority List, which was neither shown to have been maintained nor produced.

11. On the other hand, what the management would say is, that these petitioners will not come under the Seniority list because they are only piece rate workers for daily wages with no other benefits or privileges. Admittedly, they have joined the services on various years ranging from 1986 to 1992 as mentioned in the respective petitions. They were so admitted by the Managing Committee consisting of the Railway employees as Directors. Of course management may change but the successors in interest is bound by action of predecessors. In this case also, the management was taken over by the Special Officer of the Co-operative Society in July, 1991 and upon liquidation of the society, the Railway administration took over the canteen from 9-9-1993. Ex. M3 is the liquidation proceedings of the Co-operative society. The handing over and taking over of the management was dealt under Ex. M5. Thus the Railway management is responsible. The dates of initial engagement of each of the petitioners were mentioned in Ex. M1. Now what we have to see is whether they are only piece-rate workers as contended by the

management or they are entitled for the status of Railway Employee as claimed by the petitioners.

12. In his attempt to establish the case of the petitioners, Mr. Parthasarathy the learned representative for the petitioners effectively relied upon 1990-II LLN p. 197 which also deals with Canteen workers of the same Southern Railway at the same Tiruchirapalli Division. They relied upon the Railway Establishment Manuals on which reliance was placed in this case also. In that Judgement, Paras 17 to 20 deal with the background of the question as to whether the staff employed in the Statutory canteens in the Railway Establishment are Railway employees or not. It was considered in various aspects. While paragraphs 17 to 20 in that case, dealt with such background para 24 dealt with the definition of the worker. Worker as defined under Sec. 2(1) of the Factories Act is a person employed directly or by or through any agency (including a contractor) with or without the knowledge of the Principal employer, whether for remuneration or not, in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of manufacturing process. Apart from consideration of the definition of worker, the other factors considered in that case are the facts regarding the annual accounts of the canteen to be submitted to the Finance Adviser of the Department and the Audit of aCCount of Canteen to be carried out by the Departmentalised Account Organisation, and the fact that out of the surplus of the Net profit of the Canteen, 1/3rd amount was required to be remitted for Welfare of the Canteen employees. Their recruitment and service conditions were governed by Rules applicable to employees of the Government Department. Some more factors were borrowed from the instructions found in the Railway Establishment Manual. In this background, the definition of the word worker were looked into. Therefore it was found in para 25 of the above judgement that 'it is obligatory under Sec. 46 of the Factories Act on the Railway Administration to provide a canteen; such provision of the canteen was deemed by the Statute as necessary concomitant of the manufacturing activity. It was also mentioned that para 2834 made a provision for meeting the cost of the Canteen. Paras 2829, 2832 and 2834 of the Railway Establishment Manual Recognised the obligation on the Railway Administration; it was found that although Railway Administration may employ any one such as a Staff Committee or a Co-operative Society for the management of the canteens, the legal responsibility for the proper management rests not with the agent but solely with the Railway Administration. By relying upon all these facts it was found that,

"In the circumstances even where the employees were appointed by the Staff Committee, Co-operative Society it will have to be held that their appointment is made by the department through the agency of the committee/society."

It was also pointed out that the Railway Board by its Circular dated 8-6-1981 had communicated that it was decided to treat the employees of all statutory canteen as Railway servants irrespective of the type and management of the canteen and to extend to them the conditions of service and emoluments of the Railway servants as on 21-10-80 w.e.f. 22-10-1980. It was therefore held in para 28 of the above judgement that there was relationship of employer and employee created between the railway administration and the Canteen employees from the very inception. It was however, very much reiterated number of times in the judgement that although, the administration can employ as agent a Staff Committee or a Co-operative society; for management, the legal responsibility for proper management rests not with agency but solely with the railway administration.

13. In the case also, the definition of worker as found in Sec. 2(1) of the Factories Act is very well applicable to the petitioners. They were all appointed by the Managing Committee of the erstwhile Railway establishment which of course has taken over the management on 9-9-1993 soon after the Intermittent period between July 1991 to September 1993 when the management was with the Special officer of the Co-operative societies. Subsequently the society has been liquidated and the present management rests with the Railway

Administration. We have also found that although the administration vested with some agency or society, the sole responsibility for the entire administrations was only with the Railway Administration. So by the reason of the fact that Co-operative Society was in the administration between July 1991 to September 1993, Railway Administration cannot shift the burden. Therefore the entire construction is that for the whole period, the administration was only with the railways. Thus even in the Common Written Argument and Counter, it was admitted that these petitioners were appointed ranging from 1986 to 1992 by the Managing Committee of the Railway Administration.

14. Now the Learned Counsel for the Management would contend that as on 9-9-93 when the Railway Administration took over the management from the Co-operative Society, there was a liability to the extent of Rs. 2.79 lakhs. It was said that many of the credit bills for the purchase of raw-materials from the various concerns were not yet settled; it was further mentioned that it was very difficult to pay even the wages and even for the survival some financial assistance of Southern Railway Women's Welfare Organisation, Tiruchy was taken but for its help thus taken the entire administration would have stalled. These things will only go to show the mal-administration of the society and liabilities created during that period. Since the principle involved is that administration through agency of Railway is equivalent to administration of Railway itself, the later cannot throw the burden upon the society and try to find some escape. Even assuming that there was great loss in the administration of canteen which also necessitated retrenchment then the whole remedy lies in sending first the worker who joined last. This was not adopted and on this ground itself the Order of Retrenchment will not hold good.

15. Again the learned counsel for the Management argued that the petitioners were not casual labourers and when engaged they were done only as piece rate workers; that they were not paid from the local fund but only from the sale proceed of canteen. Payment may be one of the factors to be looked into but manipulation in mode of payment by itself will not decide the issue, less all management may try to victimise the otherwise regular worker to be treated as piece rate workers by changing the mode of payment of wages in an arbitrary manner. When once the petitioners were engaged, it was not informed that they were only piece rate workers. As per Ex. W21, it is made clear that some of the petitioners were subsequently regularised as fresh entrants. Ex. W20 shows that one of the petitioner by name Mrs. Lakshmi in I.D. No. 118/99 was informed that she would be eligible for Pensionary benefits under Railway Board Pension Scheme. This was made in pursuance of the decision taken to treat the employees of canteen as Railway employees w.e.f. 1-4-90 and as per the judgement in MMR Khan vs. Union of India (1990 II LLN 197). From this, it is made clear that 7 petitioners in I.D. Nos. 114 to 124/99 who were appointed prior to 1-4-90 ranging from 1986 and latest on 1-2-90 shall have to be absorbed as railway employees in pursuance of the above judgement in MMR Khan's case by the Supreme Court of India. Even the three other petitioners in I.D. Nos. 120 to 123/99 were only appointed by the Managing Committee and there is no evidence to hold that they were taken only on contract basis. The main definition between contract of service and contract for service is the difference between service rendered and service arranged. Since these petitioners have actually rendered service and they have never arranged for service they cannot at any stretch of imagination be called as contract labourers of piece rate workers. Therefore, at the inception itself there was the relationship of Master and Servant between the Railway Administration and the Petitioners.

16. Even in MMR Khan's case vs. Union of India (1990 II LLN 197) the status of non-statutory recognised canteens and their employees were dealt with. Paragraph 3132, 2130, 2829, 2831 of the Railway Establishment Manual lay down the principles governing the setting up of the Canteen which apply also to the non-statutory canteens. It was further held as follows :

"However, in either of the cases, a representative of the railway administration is to be nominated either as a Chairman or a Secretary or as a member of the

Committee. This nominee of the railway administration is under an obligation to bring to the notice of the administration any decision of the managing committee which is likely to affect the interests of the railway administration in its capacity as an owner of the premises and of the furniture, equipment, etc. or if the decision is likely to be of considerable harm to the staff. In such cases, the management committee cannot take action on the particular decision till the General Manager of the railway has recorded his decision thereon. The paragraph further ordains that where the canteens are managed by a co-operative society it should make a suitable provision in its bye-laws for supervision of the canteen by the committee of management. The paragraph also makes provision for granting loans to such canteens as initial capital from the staff benefit fund paragraph 2834 then details various facilities which are extended to such canteens which include the necessary accommodation sanitary and electric installations, furniture and cooking utensils. The railway administration is also required to bear rent on sanitary and electric installations, service taxes and charges for the electricity and water consumed. These canteens are also entitled to subsidies at present to the extent of 50 per cent of the wages of the employees engaged therein."

The Employees in these canteens are also entitled to free medical treatment as out-door patients in railway hospitals, to railway passes/PTOs, one increment as an incentive for adoption of a small family. They are also governed by the provisions of the employees' Provident Funds Act. The Board has also framed recruitment rules for these employees, vide its letter, dated 7 June 1978. These rules, among other things, lay down minimum qualifying age for recruitment, and superannuation age, minimum educational qualification, the mode of recruitment and eligibility for promotion for various posts. The nominee of the railway administration on the managing committee of the canteen is to be the appointing authority. At present, there are about 173 non-statutory recognised canteens employing about 2145 workers."

17. As against the Order of Termination of Petitioners passed on 3-10-94, the petitioners preferred to file Original Application Nos. 1186, 1205 and 1405 of 1994 before the Central Administrative Tribunal (Madras Bench) and on 11-8-97 they have withdrawn the said applications. What for they have withdrawn was not made known. The Learned Counsel for the Management took advantage of the same and contended that since there was justifiable ground for the said termination the petitioner could not resist it and therefore they have withdrawn the said applications. True it is that Ex. W7 do show such withdrawal, a careful perusal of Ex. M9 would also go to show that for the justifiable reason there was retrenchment and it appeared to have been bonafide done in good faith. Even now the Learned Counsel for the Management argued so but during discussion we have found that retrenchment is bad, since the policy of 'last come should first go' was not applied; and that there was no seniority list shown to have been maintained for application of the above principle. In that way, even though ostensible reasons was there for termination we have held that the retrenchment was bad. But the Counsel for the Management argued that the availability of the ostensible reason for termination of the petitioner and the latter's act of withdrawal of their application resisting the termination may go to indicate the circumstances and the justifiability of the consequential action of termination, if not the legality of the same. By considering this argument what we can hold is that even though termination is to be set aside, we can say that reinstatement can be made only from the date of Award and that there need not be any backwages for the principle that there can be 'no pay for no work'.

18. Hence neither by way of loss nor by reason of alleged appointment as piece rate workers, the management cannot escape from giving permanent employment to the Canteen workers namely the petitioners. They have to be treated as direct railway employees. They are to be given such status of direct railway employees with effect from this date of award. The order of termination of the services of petitioners

is not legal. However they will not be entitled for backwages as per the principle that there will be no pay for no work. Thus petitioners will be considered as fresh entrants from the date of this Award. Award passed accordingly. No costs. Dated at Chennai, this the 20th day of April 2001.

S. R. SINGHARAVELU, Industrial Tribunal

I.D. Nos. 114/99 to 124/99

Witnesses examined

For Petitioner/Workman: None.

For Respondent/Management: MW1 Thiru M. Jayasekar.

For Petitioner:

DOCUMENTS MARKED

- Ex. W1 11-9-98: Complaint to the Regional Labour Commissioner(C) by the Worker under Section 2A of the I.D. Act, 1947.
- Ex. W2 9-2-99: Counter reply of the railways (Respondent) to the Labour Enforcement Officer(C) Tiruchirappalli.
- Ex. W3 : The conciliation failure report of the petitioner's (C) to the Secretary, Ministry of Labour, Government of India.
(Ex. W1 to W3 separately marked)
- Ex. W4 18-5-90: Railway Board's E(W) 90-CN-1-7-(II).
- Ex. W5 19-11-90: Railway Board's letter E(W) CNI-8.
- Ex. W6 22-4-83: The copy of the Interim orders of the Supreme Court in W.Ps. 2275 to 2285/82.
- Ex. W7 11-8-97: Central Administrative Tribunal's order in O.S. Nos. 1186, 1205 and 1405/94.
- Ex. W8 3-7-93: The letter of the Special officer Canteen-Liquidator Co-op. Tribunal.
- Ex. W9 9-9-93: Taken over/Handing over report T/P 140/P/1/Vol. 5.
- Ex. W10 9-1-97: Southern Railway Head Quarters letter P/W/140 engagement of CLs.
- Ex. W11 10-1-97: Office Order No. 45/97 issued by the CPO/SR.
- Ex. W12 29-1-97: Appointment order 26/97 by APO/CW/PER.
- Ex. W13 10-9-98: Letter issued by the Senior DPO/MAS/MIP 140/V/Canteen.
- Ex. W14 10-6-98: Letter of Sr. DPO/MASM(P) 140/V Canteen.
- Ex. W15 2-6-97: Office Order 14/97 issued CPO/MAS/SR.
- Ex. W16 22-4-92: Letter of SPO/SR P(W) 140SP/Vol. VI SC/Pt/CL.
- Ex. W17 15-9-98: Office Order M.P. 1/E/140/V/Canteen 47/98.
- Ex. W18 22-4-92: Letter to Secretary to Government of Tamil Nadu Co-op. From Canteen Workers Union of Southern Railway.
- Ex. W19 19-4-91: Letter from the C.P.O./SR to all officials of Canteens vide P(W) 195/P/Vol. VII/with enclosures.
- Ex. W20 -7-93: Letter by the Accounts Officer of the Regional Provident Fund Commissioner Tiruchy to R. Lakshmi.
- Ex. W21 21-2-97: Office Order No. 3/97, dt. 21-2-97 reg. engagements of substitutes in Railway canteen.

For Management:

- Ex. M1 T/P. 140/P/1/Vol. V dt. 21-4-93 Particulars regarding Casual Labourers.
- Ex. M2 Na. Ka 4808/92/MN dt. 21-6-93—Proceeding Liquidation of Co-op. Canteen.
- Ex. M3 3-7-93: Liquidation Proceedings by the Co-op. Sub Registrar.

AWARD

- Ex. M3 3-7-93 : Liquidation proceedings by the Co-operative Sub Registrar.
- Ex. M4 8-7-93 : From Special officer Co-op. Canteen letter.
- Ex. M5 1/P. 140/P1 Vol. V, dt. 9-9-93 : Handing over taking over of the Canteen Management.
- Ex. M6 1/2/140/P1/Vol. V dt. 20-7-94 : Payment of wages to Casual Labourers.
- Ex. M7 P/P/140/P1/Vol. V dt. 30-7-94 : Reply to Parliament Question on Canteen.
- Ex. M8 T.P. 140/P/I/Vol. V dt. 30-7-94 : Reply regarding re-engagement of Casual Labourers.
- Ex. M9 T.P. 140/P/I/Canteen dt. 3-10-94 : Retrenchment notices to the Casual Labourer.

नई दिल्ली, 5 मई, 2001

का. आ. 1347—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण से, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के पध्दतन के सबद्वितीय और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण राउरकेला के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-5-2001 को प्राप्त हुआ था।

[स. एन -12012/108/99/आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 25th May, 2001

S.O. 1347.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Rourkela as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 24-5-2001.

[No. L-12012/108/99 IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ROURKELA

Industrial Dispute Case No. 8/99(c)

Dated, the 31st October, 2000

PRESENT :

Sri Alak Kumar Dutta,
Presiding Officer,
Industrial Tribunal,
Rourkela

BETWEEN

The Zonal Manager,
State Bank of India, Zonal Office,
Sambalpur Ist party management

AND

Sri Premanand Sethi, Sanaleswari
Colony, At : Modipara, Sambalpur .. IInd party workman

APPEARANCES :

For the Ist party .. Sri U.C. Mishra, Dy Manager
For the IInd party .. In person.

The Govt. of India in the Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of I.D. Act have referred the following disputes for adjudication vide No. L-12012/108/99 IR(B-1) dt. 16-6-99 :

"Whether the action of the management of State Bank of India Zonal Office, Sambalpur verbally terminating the services of Sri Premanand Sethi, Plumber w.e.f. 5-3-98 is justified? If not, what relief the workman is entitled to?"

"Whether the demand of the workman, Sri Premanand Sethi, Plumber for regularisation of his services with all benefits at par with the sub-staff of the State Bank of India from May, 1994 to 5-3-98 is justified? If so, what relief the workman is entitled to?"

2. The claim of the 2nd party in brief is as follows:—

He joined under the Ist party management i.e. in the zonal office, Sambalpur in May, 1994 as a plumber. This job is perennial in nature and on days, when there was no plumbing work, he was asked to perform messengerial job. In 1997, the Chief Manager put up a note before the Dy. General Manager for regularisation of his service which was turned down as the management apprehended that the workman would claim permanency in his work. His service was verbally terminated on 5-3-98. Now plumbing work is being done through a contractor. While working as plumber he was getting less payment than what a subordinate staff was getting by way of discrimination.

3. In reply, the management contend that the claim of the workman working as plumber in the Zonal Office from May, 1994 to March 1998 is false and baseless. He did not work in the bank for more than 1374 days. There is no employer and employee relationship between them. The workman was not performing messengerial job on the days when there was no plumbing work is not true. The workman being a plumber by profession was asked to do the job of repairing, fitting etc. as and when required by the bank's zonal office premises at Sambalpur and in the staff quarters. He was being entrusted with the work at specified rates accepted by him. Whenever he was taking up such work, he was submitting separate bills for the work done plus cost of materials and the said bills were passed and paid to him. The workman was neither engaged by the bank on wage basis nor on temporary basis. He was contacting zonal office for getting work and whenever such work was available, he was being asked to do so and payment was being made to him as per bills submitted by him. The management claims that there is no post of plumber available in the Zonal office at Sambalpur. So his working as plumber in the zonal office does not arise. He was getting work whenever it was available and receiving payment as per the work done and as such his retrenchment does not arise. The workman was never given assurance regarding regularisation of service as no such post was lying in the zonal office. Since, he was getting payment as per the work done at piecemeal basis his wages cannot be at par with subordinate staff. The management claim that the case of the workman does not fall under 25-F of the I.D. Act. The workman has never received salary from the management. Hence prayer for dismissing the case.

4. On the aforesaid analysis, following issues have been framed :

I : Whether the action of the management verbally terminating the services of the workman w.e.f. 5-3-98, is justified ?

II : Whether the demand of the workman for regularisation of his services with all benefits at par with the sub staff of the management from May, 1994 to 5-3-1998 is justified?

III : If not, what relief the workman is entitled to ?

5. Issue Nos. I to III.—All these issues are taken up together as all are interlinked. Only one witness i.e. the 2nd

ity has been examined as W.W. 1 and four witnesses from the side of the management as M.W. 1, 2, 3 and 4. W.W. 1 states that he joined Sambalpur zonal office, in April, 1994 as plumber for work in the office as well as in the quarters of the bank employees. He was being paid Rs. 1,000 per month. After 5 to 6 months, one electrician of the bank had a case and so for some reasons he was asked to submit a work chart so that he would be paid as per the work done. Accordingly he was getting payment. Then the Office Manager wrote to the Dy. General Manager to regularise his service which was turned down vide Ext. 1. Thereafter for his work when he asked for payment, the office asked him to submit contractor bills to receive payment. He refused to submit contractor bill. From 5-3-1998 he was stopped work and was not paid anything. He proves Ext. 2 as the bipartite settlement dated 15-5-1995 and in page-3, it is mentioned that a plumber as employee of the bank in the subordinate cadre will get special allowance of Rs. 119 per month. He proves Ext. 3 as the contract labour regulation and abolition act, Ext. 4 as the letter of D.G.M. not to engage contract labour. He proves Ext. 5 where he has been shown as plumber. He proves Ext. 6 as the four bills for payment to him regarding work done in the officers quarters. He admits that bank has not issued any appointment order to him. He was not signing in attendance register while coming to the bank everyday. He denies the suggestion that he was not receiving Rs. 1,000 per month. He has not filed any document to show that he was getting Rs. 1,000 per month. He admits that he was getting labour charges keeping in view of the work done by him on his submission of bills. He has written to the bank that he started work in 1995. He admits that he was getting payment purely on the basis of rate chart which has been accepted by him. Therefore his payment varies from day to day depending upon his execution of work and submission of bill. He further states that the bank was placing orders to the supplier for supply of sanitary articles and the bank was directly making payment to the supplier. He admits that he has never given any application to the management for leave. He denies the suggestion that the bank never accepted him as its employee. He also admits that on many days he went without work and as such receiving no payment.

6. M.W. 1 was Dy. Manager, Sambalpur zonal office. He states that some times in 1995, the 2nd party approached the zonal office for doing some sanitary and plumbing work and the bank asked him to come at intervals & enquire about work and if there would be work, he would be given to perform it. Thereafter at times the 2nd party was coming to the bank and enquiring about work and whenever there was any work, he was being entrusted with it. The payment was being made as per the work done by him and so the payment was not uniform on each date. He was not coming to the office regularly nor giving any attendance and was not being paid wages on monthly basis. M.W.2 also states that the 2nd party was coming to the office at his own sweet will and whenever there was sanitary or plumbing work he was being entrusted to do it. He had submitted a rate chart, and payment was being made to him making the calculation as per that chart. Sometimes the bank was directly purchasing sanitary fitting materials from the shop and the 2nd party was simply fitting it and receiving the labour charges. In the same line is the evidence of M.W. 3. He states that at times the 2nd party was coming to the office and enquiring about sanitary work and if work was available then he was being entrusted to do it. He states that 2nd party was executing the work as an outsider. He had submitted a rate chart and submitting bills making calculation as per rate chart and accordingly payment was being made. So payment was never uniform. He was never asked not to come. He suo motu stopped coming.

7. M.W. 4 states that Ext. 1 is the note put up by him before D.G.M. for engagement of an electrician and a plumber on regular basis which was turned down. He admits that in Ext. 1 he was mentioned to engage the 2nd party as a plumber who was undertaking work since last many months and he was doing work on piece-rate basis.

8. The 2nd party arguing his case submits that from the documents filed and from the oral evidence recorded there can be no doubt that he was regularly working as plumber and appointment of a plumber on regular basis is not prohibited

as per Ext. 2. On the other hand, the learned representative of the 1st party submits that the 2nd party was doing plumbing work whenever work was available and payment was being made as per rate chart given by the 2nd party and approved by the management. So he was not employee of the bank and there was no employer and employee relationship between them.

9. The 2nd party admits that he was never issued with any appointment order. Even management witnesses admits that he was doing plumbing work in the zonal office and in the staff quarters. Although the 2nd party claims that he was receiving Rs. 1000 per month for his work as a plumber to prove that he was an employee of the bank yet this fact has not been proved either by oral or documentary evidence. No management witnesses have admitted that the 2nd party was getting Rs. 1000 per month for his work. On the other hand all the management witnesses have stated that he was coming to the bank at intervals and enquiring about plumbing work and if there was work, he was being entrusted to do it and on his completion of work he was submitting bills for payment making calculation as per the rate chart submitted by him and approved by the management. That means he was getting labour charges only for the work done by him and was not receiving payments like a subordinate staff. And this has been admitted by the 2nd party in clear terms in his evidence and this I have mentioned earlier. He has also admitted that on days when there was no work he was not getting any payment. So he cannot be considered even as a part time worker of the management because a part time employee of the bank gets his salary proportionate to the number of hours he works every day as ordered by the management. This is not in the case of the 2nd party. He was getting no payment on days when he had no work. From all these facts I hold that the 2nd party was not an employee of the bank. Therefore there is no employer and employee relationship between them and as such the reference is not maintainable.

Accordingly the reference is answered.

A. K. DUTTA, Presiding Officer

नई दिल्ली, 21 मई, 2001

का. आ. 1338—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इण्डियन इन्स्टीट्यूट ऑफ हॉर्टीकल्चरल रिसर्च के प्रबंधन के संवद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बैंगलोर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[सं. एल.-42012/105/91-आई आर (डी यू)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 21st May, 2001

S.O. 1348.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Bangalore, as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Indian Instt. of Horticultural Research and their workman, which was received by the Central Government on 21-5-2001.

[No. L-42012/105/91-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

OFFICE OF THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 14th May 2001

PRESENT :

Hon'ble Shri V. N. Kulkarni, B. Com., LLB., Presiding Officer.

C. R. No. 55/92

I PARTY

Sri N. Srinivas
S/o Sri Narayanappa,
Hessarghatta Post
Billigaji,
Bangalore North Taluk
Bangalore.

II PARTY

The Director,
Indian Institute
of Horticultural Research
255, Upper Palace Orchards,
Bangalore-560080.

AWARD

1. The Central Government by exercising the powers conferred by Clause (d) of sub-section (1) and sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-42012/105/91-IR(DU) dated 30-6-1992 for adjudication on the following schedule.

SCHEDULE

"Whether the action of the management of Indian Instt. of Horticultural Research in terminating the services of Shri N. Srinivas, casual worker w.e.f. Sept. 1984 is justified? If not, what relief the workman concerned is entitled to?"

2. Parties appeared and filed claim statement and counter respectively.

3. The first party has been in the service of the second party since 13-10-80 and was drawing salary of Rs. 300. He was engaged in Horticultural operations as stated in para 3 of the Claim Statement. On 10th September 1984 he fell ill on account of Typhoid and he was unable to attend work. After recovering from illness he reported for work but he was not allowed to resume duty.

4. First party filed claim statement. The case of the first party is that he was not well due to Typhoid and did not attend work for 3 months and after recovering from illness when he reported for work he was not taken on duty.

5. It is his further case that a false case was filed against him along with 28 other workmen and he was acquitted. The management refused to take the first party back to duty and other workers were reinstated. The first party for these reasons has prayed to pass award in his favour.

6. Second party appeared and filed objections. The case of the second party is that all the allegations made by the first party are not correct. The first party was always irregular for work. It is not correct to say that the first party was drawing salary of Rs. 1300 per month. The first party was engaged as a casual worker on daily wage basis for doing the work of Casual Labour therefore he has no case. The allegation is that false case was filed is not correct. The first party had never approached for reinstatement.

7. It is the further case of the management that out of 28 workmen 21 workmen had approached this Hon'ble Tribunal in CR. No. 13 of 1989 seeking direction for reinstatement and in accordance with the directions issued by this Tribunal, they have joined duty with the second party. The workman was not a party in the said proceedings i.e. CR. No. 13/89. The first party himself had failed to attend the

work. The provisions of Section 25F and G are not applicable. Second Party for these reasons has prayed to reject the reference.

8. It is seen from the records that miscellaneous petition was filed and the matter was restored. Thereafter management examined one witness. Workmen got examined himself.

9. It is seen from the records that first party remained absent. Thereafter, the case is closed.

10. According to the evidence of MW1 they have 150 casual labourers and they are appointed to assist research work on casual basis. He further said that the work was given to casual labourers whenever there is work. They do not have any continuity. First party was a casual labourer. First party was not regularly coming to work. On 10-9-84 he worked for the last time and thereafter he did not turn up. This witness is not cross examined by the first party even after giving adjournments and his evidence remained as it is. According to his evidence the first party was a casual labourer. We are also having evidence of workmen. He said in his cross examination that he did not have any appointment letter to show that he was working as a permanent employee in the second party. It is in his evidence that he was working as a Casual Labourer. He also said in his cross examination that he did not send any leave application along with medical certificate to show that he is suffering from Typhoid. He is aware that an award was passed on 2-11-88. He says he does not know whether his claim was disallowed due to the fact that he has not signed the claim statement. If we consider the above evidence of first party it is clear that the first party was only a casual labourer and that too he remained absent and he did not report for work and there is no merit in this dispute. Accordingly I proceed to pass the following order.

ORDER

The reference is rejected.

(Dictated to PA transcribed by her corrected and signed by me on 14th May 2001).

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 21 मई, 2001

का. अ. 1349.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सचाल हाइड्रो इलेक्ट्रिक प्रोजेक्ट के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, शून्यबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[सं. एल.-42011/71/90-आई आर (डीयू)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 21st May, 2001

S.O. 1349.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Chandigarh, as shown in

ral Government on 21-5-2001.
ers in relation to the management of Salal Hydro Electric Project and their workman, which was received by the Central Government on 21-5-2001.

[No. L-42011/71/90-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE SHRI B. L. JATAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 185 of 1997

General Secretary,
Salal Project Workchance
Employees Union,
Talwara Colony,
658-H, Reasi, Udhampur-182312.
(J&K)

Petitioner

Vs.

The General Manager,
Salal Hydro Electric Project,
Jyotipuram, Via Reasi Jilla,
Udhampur-182312 (J&K)

Respondent.

REPRESENTATIVES :

For the workman : None.

For the management : Sh. V. K. Gupta.

AWARD

(Passed on 25th April, 2001)

The Central Government Ministry of Labour vide Notification No. L-42011/71/90-IR.(DU) dated 16th October 1997 has referred the following dispute to this Tribunal for adjudication :

“Whether the demand of the Salal Project Workchance Employees Union as contained in its charter of demands dated 15-2-90 (enclosed) is legal and justified? If not, to what relief the workmen are entitled?”

2. Today the case was fixed for filing of claim statement on behalf of the workman. None has put up appearance on behalf of the workman despite several notices. It appears that workman is not interested to pursue with the present reference. In view of the above, since the workman is not interested to pursue with the reference, the same is returned to the Appropriate Govt. for want of prosecution. Appropriate Govt. be informed.

Chandigarh
25-4-2001.

B. L. JATAV, Presiding Officer

नई दिल्ली, 21 मई, 2001

का. आ. 1350.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार खादी ग्रामोद्योग कमिशन के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जयपुर के पंचाद को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[सं. एल.-42011/89/99-आईआर (डीयू)]
कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 21st May, 2001

S.O. 1350.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Jaipur, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Khadi Gramodyog Commission and their workman, which was received by the Central Government on 21-5-2001.

[No. L-42011/89/99-IR(DU)]
KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL-CUM-
LABOUR COURT, JAIPUR

Case No. CGIT 15/2000

Reference No. L-42011/89/99/IR(DU) dt. 18-2-2000

General Secretary,
Rashtriya Khadi Commission Karmachari Union,
Jhalana Doongri Sansthan Area,
Jaipur (Rajasthan)

Applicant.

Vls.

(1) Director,
Khadi and Village Industries Commission,
Jhalana Doongri Sansthan Area,
Jaipur.

(2) The Chief Executive Officer,
Khadi and Village Industries Commission,
3-Iria Road Vile Parle(W),
Mumbai-56.

Non-applicant.

ATTENDANCE :

For the Union : Shri A. K. Shukla.

For the non-applicant : Shri D. P. Pujari

Date of Award : 9-4-2001.

AWARD

The following dispute was referred by the Central Government under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as the Act, 1947) for adjudication.

“Whether the action of the Director, Khadi Gramodyog Commission, Jaipur withholding the increment of Shri Kailash Chand Sharma, Sr. Clerk for 6 months without decision on appeal made by the workman to the State Director, Khadi Gramodyog Commission, Jaipur was legal and justified? If not, to what relief the workman is entitled?”

The claim was filed by the General Secretary, Rashtriya Khadi Commission Karmachari Union (hereinafter referred as the Union). It was stated that applicant Shri Kailash Chand Sharma was working in the Khadi and Village Industries Commission at Jaipur (hereinafter referred as the Commission) on the post of UDC. He has been actively functioning as General Secretary of the Union since 1995. There is a rival Union functioning in the Head Office of the Bombay under the name of “Khadi Commission Karmachari Union” Bombay (hereinafter referred as rival Union) with its branches in different states. The then Respondent No. 1 and other senior officers had been office bearers and active members of the rival Union and they did not like the existence of the Union to which he was actively associated. In the year 1996 at the time of General Election of Lok Sabha the services of the employees of the Commission working under Respondent No. 1 were requisitioned by the Election Commissioner for conducting the election. The Respondent No. 1 instead of deputing the employees sent 6 to 7 employees deliberately on tour out of Jaipur and others were deputed in their places. Due to the discriminatory treatment there was a resentment amongst the employees who were sent on election duty and made representations to him. At this he addressed letter dated 17-4-96 to the Chief Election Commissioner pointing out the irregular and discriminatory treatment of Respondent No. 1. The Respondent No. 1 instead of taking corrective measures issued a show cause notice dated 30-9-96 to him alleging that in respect of the complaint made by him to the Chief Election Commissioner, the Chief Election Commissioner was satisfied with the reply of Respondent No. 1. The representation dt. 17-4-96 was treated by Respondent No. 1 as undue interference by the Union and proposed to take disciplinary action against him. In reply it was stated that he had only ventilated the grievances of the employees in the capacity of the General Secretary of the Union and the proposed to initiate disciplinary action is without any substance. He also sought the copy of the letter as dated 1-5-96 of the Assistant Election Commissioner as well as the copy of the letter sent to the said authority by the Respondent No. 1 to enable him to furnish the reply. Although copy of the letter date

1-5-1996 was made available, the other documents sought by him were not made available and instead of making the relevant documents available to him the Respondent No. 1 passed the punishment order dated 8-11-1997 withholding increment for a period of 6 months under Khadi and Village Industries Commission Employees (Conduct Discipline and Appeal) Regulations, 1961 (hereinafter referred as the Regulations, 1961). It was stated that punishment was arbitrary in violation of principle of natural justice and contrary to Regulations, 1961 and therefore an appeal dated 24-12-97 was made to the Chief Executive Officer of the Commission. The Respondent No. 2 did not decide the appeal and is still living pending. It was prayed that the order imposing the punishment of withholding the increment be declared arbitrary in violation of principles of natural justice and rules applicable and being malafide.

On behalf of the non-applicant, reply to the claim was filed. In reply objection was taken that the reference made by the Central Government is not maintainable as the "appropriate Government" is the Government of Rajasthan and not the Central Government. It was also alleged the Union is not the recognised Union and, therefore, the dispute raised by the Union is not maintainable. It was also alleged that the Tribunal has no jurisdiction to hear the dispute. It was also pleaded that the applicant is not legally elected General Secretary of the Union and has no right to raise the dispute. The allegation about the prejudices of Respondent No. 1 against the applicant was denied. It was stated that the allegations made by the applicant against the two officers were baseless and were made in order to defame them which act amounts to indiscipline. It was prayed that the claims filed by the applicant may be dismissed with costs.

On 26-2-2001 both the parties agreed not to produce any evidence and sought time for arguments. The case was adjourned to 7-3-2001 for arguments. On 7-3-2001 Shri A. K. Shukla representative of the Union sought time for arguments and the case was adjourned to 9-4-2001. Today on 9-4-2001 none is present on behalf of the Union. Shri D.P. Pujari learned counsel for the non-applicant was heard.

The jurisdiction of the Tribunal is limited to points of dispute mentioned in the reference order. As per the terms of reference the only point which requires consideration is as to whether withholding the increment of the applicant without decision on appeal made by him is legal and justified. It is not in dispute that against the order of the Respondent No. 1 dated 8-11-1997 vide which punishment of withholding of increment for a period of 6 months which was to take effect from the date of the next increment could be executed without decision on appeal. Unless the order of punishment is stayed, there is no bar for executing the punishment order. There being no order of stay against the order of punishment passed by Respondent No. 1 the action of the Director of the Commission withholding the increment of applicant for six months without decision on appeal cannot be said to be illegal and unjustified and, therefore, the applicant is not entitled to any relief.

The copies of the Award may be sent to the Central Government under Section 17(1) of the Act, 1947 for publication.

Sd/-
Presiding Officer

9 4-2001.

नई दिल्ली, 21 मई, 2001

का. अ. 1351 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेंट ऑफ पोस्ट ऑफिसों के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[सं. एल.-40012/75/99आई आर (डी यू)],
कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 21st May, 2001

S.O. 1351.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal/Labour Court, Chandigarh, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Sr. Supdt. of Post Offices and their workman, which was received by the Central Government on 21-5-2001.

[No. L-40012/75/99-I.R.(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE SHRI B. L. JATAV, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, CHANDIGARH

Case No. ID 179/99

Rajbir Singh son of Jagan Nath (Ex-EDDA) VPO
Jalalpur District Panipat. .. Workman

Versus

Sr. Supdt. of Post Offices, Karnal Division, Karnal.

APPEARANCES :

For the workman : Workman in person.

For the management : Shri C. B. Garg.

AWARD

(Passed on 1st of May 2001)

The Central Govt. vide notification No. L-40012/75/99/IR/ DU dated 25th of August 1999 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of Sr. Supdt. of Post Offices, Karnal Division in terminating the services of Shri Rajbir Singh EDR post at BPO Nanhera, Distt: Karnal, w.e.f. 14-10-1995 is legal and justified? If not, whether the workman is entitled for continuity of service and arrears of wages for the period from 14-10-1995 to 23-12-1998 when he was re-appointed as EDA on regular basis."

2. Today the case was fixed for filing of claim statement. Workman appeared and made the following statement :

"I do not want to pursue the present case any further, the same may be returned to the Ministry as withdrawn."

In view of the statement of the workman that he does not want to pursue with the present reference, present reference is returned to the Govt. as withdrawn. Appropriate Govt. be informed.

Chandigarh.
1-5-2001.

B. L. JATAV, Presiding Officer

नई दिल्ली, 21 मई, 2001

का. अ. 1352 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सुपरिन्टेन्डेंट ऑफ पोस्ट्स के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[सं. एल.-40012/337/2000-आई आर (डी यू)]
कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 21st May, 2001

S.O. 1352.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Chennai, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Superintendent of Posts and their workman, which was received by the Central Government on 21-5-2001.

[No. L-40012/337/2000-IR(DU)]
KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 3rd May, 2001

PRESENT:

K. Karthikeyan, Presiding Officer,
Industrial Dispute No. 82/2000

(In the matter of the dispute for adjudication under Section 10(1)(d) and sub-section 2(A) of the Industrial Disputes Act, 1947 between the Workman Sri K. Kumar and the Management of Superintendent of Post Offices, Pudukottai Division.)

BETWEEN

Shri K. Kumar,

S/o Sri Kaliaperumal. Workman/I Party

AND

- (1) The Superintendent of Post Offices,
Pudukottai Division.
- (2) The Asst. Superintendent of Post Offices,
Pudukottai Division. Management/II Party

APPEARANCE:

For the Workman: Smt. S. Jyothivani, and R. Balaguruswamy, Advocates.

For the Management: Sri K. Sivajothi, Addl. Central Government Standing Counsel.

REFERENCE:

Order No. L-40012/337/2000-IR(DU) dt. 10-10-2000,
Government of India, Ministry of Labour, New
Delhi.

This dispute on coming up before me for final hearing on 30-4-2001, upon perusing the reference, Claim Statement, Counter Statement and the documents filed on the side of the Management and other material papers on record and upon hearing the arguments of learned counsel for the Petitioner Smt. S. Jyothivani and the learned counsel for the Management Shri K. Sivajothi, Additional Central Government Standing Counsel and this dispute having stood over till this date, this Tribunal passed the following:—

AWARD

This reference by the Central Government in exercise of the powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947, in respect of dispute between Shri K. Kumar, Workman and the Superintendent of Post Offices, Pudukottai Division, Pudukottai, Management, mentioned as Schedule appended to the order of reference.

The Schedule reads as follows:—

“Whether the non-regularisation and termination of Shri K. Kumar by the Superintendent of Posts, Pudukottai is legal and justified? If not, to what relief the workman is entitled?”

2. This order of reference was received on 20-11-2000 by this Tribunal for adjudication of the industrial dispute mentioned in the Schedule and it was taken on file by this Tribunal as Industrial Dispute No. 82/2000 on the same day. Notices were ordered to be sent to both the parties by Registered Post with acknowledgement card, with a direction to appear before this Tribunal and to file their respective Claim Statement and Counter Statement with the documents relied upon. Accordingly, both the parties entered appearance through their counsel and filed their respective Claim Statement and Counter Statement. Both the parties have filed copies of documents. When the matter was taken up for enquiry Ex. M1 and M2 were marked by consent by the counsel on either side. On the side of the Petitioner only typed set of copies were filed. Not even xerox copies of the original documents mentioned in the list of documents have been filed. Hence, these documents have not been exhibited as documents in support of the Petitioner/I Party. The arguments advanced by the learned counsel for either side were heard. This case has been posted for orders today.

3. The averments in the Claim Statement of the I Party/Workman are briefly as follows:—

The I Party/Workman (hereinafter referred to as Petitioner) is a qualified candidate for appointment for the post of Extra Departmental Agent in the Postal Department. One post of Extra Departmental Delivery Agent fell vacant at Thondamanallur Branch Office, due to the unauthorised absence of the regular-holder of the post. Local Notification was issued calling for applications and as a qualified candidate, the Petitioner applied for the post. Among the candidates appeared for selection, since the Petitioner was found most suitable for appointment, the Asst. Superintendent of Post Offices, North sub-division, Pudukottai, selected and appointed the Petitioner as Extra Departmental Delivery Agent, Thondamanallur (BO). The Petitioner was rendering his duties to the entire satisfaction of his superiors from the date of his appointment till his termination dated 15-10-97. While he was working, he has submitted a number of representations before the Superintendent of Post Offices, Pudukottai Division for regularisation of his services. His request has not been considered, but on the other hand, Employment Exchange was addressed for sponsoring candidates for selection. The Petitioner filed an application before the Central Administrative Tribunal, Madras Bench for regularisation of his service and by another application, challenging the selection of another candidate for the post by the department. The Petitioner could not succeed in both the applications. The Petitioner had rendered his services continuously for more than three years in the Respondent department. During his service, he has not come to the adverse notice of his superiors and his service was continuous one without any break. Moreover, he is a qualified candidate for appointment to the post and at the time of his termination, he was not issued with any order/notice for termination. The termination of service from the post of Extra Departmental Delivery Agent, Thondamanallur (BO) is bad in law and against the principles of natural justice and in violation of principles enshrined under section 25(f) of the Industrial Disputes Act, 1947. The Petitioner had served in the Respondent department for more than 240 days continuously without any break and as such the Respondent department ought to have issued notice or notice pay in lieu of notice before terminating the services of the Petitioner and the failure of the same made the order of termination void ab initio and is liable to be set aside. The Respondent, the Superintendent of Post Offices, Pudukottai Division and the Assistant Superintendent of Post Offices, North Sub-division, Pudukottai, have not applied their mind before terminating the Petitioner from service. The Petitioner is having privilege under Rule 6 of Extra Departmental Agent (Conduct and Service) Rules, 1964, which specifically states that a Workman who had put in three years continuous service, should not be terminated from service. The Petitioner had filed a petition under section 2A of the Industrial Disputes Act before the Conciliation Officer, Madras. Since that attempt by the Conciliating Authority was ended in a failure a failure report was sent by him to the Ministry of Labour and the Ministry was pleased to order a reference for adjudication. Therefore, this Hon'ble Tribunal may be pleased to pass an award holding that the termination of the Petitioner from the post of Extra Departmental Delivery Agent, Thondamanallur, Pudukottai Division on 15-10-97 is bad in law

and to direct the Respondent to give all attendant service and monetary benefits from the date of termination till the reinstatement.

4. The averments in the Counter Statement of the Management/II Party the respondent are briefly as follows:—

The Respondent submits that the Superintendent of Post Offices, Pudukkottai Division is not the appointing authority for the post of EDDA, Thondamanallur BO. The Asstt. Superintendent of Post Offices, Pudukkottai North Sub Division, Pudukkottai is the appointing authority and the Respondent is only the Reviewing Authority. According to the Rules prevalent at that time, the post of EDDA cannot be filled up by local Notification, but only list of candidates nominated by the Employment Exchange should be considered. The regular incumbent was unauthorisedly absent from duty frequently and the Petitioner was engaged by the Branch Postmaster, Thondamanallur, as substitute EDDA to look after the duties of EDDA on his own responsibility with effect from 26-09-1994. When the absence of the regular EDDA exceeded 180 days, disciplinary action was initiated against the regular incumbent by the Asstt. Superintendent of Post Offices, North Sub Division, Pudukkottai and in the meanwhile, the regular EDDA expired on 20-05-97. So, the post of the EDDA, Thondamanallur became vacant and an action was taken by the Assistant Superintendent of Post Offices, North Sub division, Pudukkottai, to fill up the post by calling nominations from the Employment Exchange. Memo dated 26-09-94 of Asstt. Superintendent of Post Offices, North Sub-division, Pudukkottai, is not an appointment order to the Petitioner. It is an order given to the Postmaster, Pudukkottai Head Office i.e., the Pay Drawing Authority for drawal of allowances. It is not known as to how the Petitioner was able to get the proforma of prescribed provisional appointment order as stipulated under DG Posts letter dated 16-12-97. From that letter, it could be seen that the Petitioner was not at all appointed but he was merely acting as stop gap arrangement to look after the duties of post, till a regular candidate is appointed. The Petitioner sent a representation on 16-6-97 to the Respondent, even though the Respondent is not an appointing authority for the post of EDDA, thondamanallur, seeking appointment on regular basis on the ground that he was provisionally appointed and he was a candidate included in the dovetailed list. This was checked and found that the name of the Petitioner was not in the dovetailed list and he was not appointed provisionally to the post of EDDA, Thondamanallur. Only the Asstt. Superintendent of Post Offices, North Sub Division, Pudukkottai took action to fill up the post by calling nominations from the Employment Exchange. The Petitioner's name was also nominated by the Employment Exchange along with other eight candidates. The Petitioner was asked to submit an application on or before 10-9-97 by sending an application to him on 28-8-97 and it was received by the Petitioner on 29-08-97. But the Petitioner, did not submit the application to the Asstt. Superintendent of Post Offices, North Sub Division, Pudukkottai. He filed a O.A. in the Central Administrative Tribunal, Chennai as O.A. No. 966/97 and the same was dismissed stating that no question of regularisation arises from that case. The Petitioner again filed a case in the Central Administrative Tribunal, Chennai under No. 1260/97 suppressing the fact of the previous case under No. 966/97. The Hon'ble Central Administrative, Tribunal, Chennai, again dismissed the case stating that there is no merit in the application. The Petitioner is not at all appointed to the post of EDDA, Thondamanallur B.O. either provisionally or regularly, through the normal recruitment rules/process. Hence, any period spent by him on the post only purely temporary and stop gap arrangement and that service cannot be taken as service rendered in the department. As such the question of claim of the Petitioner that he has not come to the adverse notice of the superiors etc cannot be taken into account. He worked only as substitute EDDA during the said period. The Petitioner was not at all appointed as EDDA in the postal department under the provisions of FD Agents Rules. He was not governed by P & T FD Agent (Conduct and Service) Rules 1964. He had not at all given any application for the post of EDDA, when he was initially engaged by the Branch Postmaster, Thondamanallur on 26-9-94 since he was not appointed either provisionally or regularly. Hence the question of issuing notice to the Petitioner does not arise. But the Assistant Superintendent of Post Offices, Pudukkottai North Sub

division, Pudukkottai, had given an opportunity to the Petitioner to apply for the post for consideration as his name also was nominated by the Employment Exchange along with other eight names for the selection of the candidates to fill up the said post on regular basis. The Petitioner did not utilise the opportunity by sending an application to the Asstt. Superintendent of Post Offices, North Sub Division, Pudukkottai for considering his case, as it has been directed by his letter dated 28-8-97. As the Petitioner had not utilised the opportunity given to him, the post was filled up by the Asstt. Superintendent of Post Offices, North Sub Division, Pudukkottai, by way of transfer by considering the request of one ED Agent working in another office. Thus, it could be seen that the Petitioner was discharged from the post of EDDA, Thondamanallur, only after his failure to apply for that post, even though he received the application on 29-8-97. Hence, there is no violation of principles of natural justice in this case. The Respondent has not at all terminated the Petitioner's service. The Petitioner was not recruited through normal recruitment process. He is only a substitute EDDA engaged by the Branch Postmaster, Thondamanallur, on his responsibility for stop gap arrangement. The Petitioner cannot invoke the provisions of Industrial Disputes Act at this stage, in view of the fact that he filed two cases before the Central Administrative Tribunal, Chennai and both were dismissed. He can file an appeal only in the Hon'ble High Court, Chennai, against that order of Central Administrative Tribunal and cannot approach Labour Court. The Hon'ble Central Administrative Tribunal had dismissed both the cases on merit. Hence, the question of regularisation of petitioner's service does not arise. The Post of EDDA, Thondamanallur was filled in by way of transfer of one ED Agent working in another office and he is continuing in the post. Therefore, the Hon'ble Tribunal may please be dismissed this industrial dispute.

5. When the case was taken up for enquiry, the counsel on either side gave consent for marking two documents as exhibits M1 and M2. On the side of the Petitioner, typed set of documents have been filed as six in number. When the Petitioner was directed to file either original or xerox copies of the same, he has not chosen to produce the same. As such, no documents on the side of the Petitioner has been filed. The arguments advanced by the learned counsel on either side was heard and the case was posted to this date for orders.

The point for my consideration is as to whether non-regularisation and termination of Shri K. Kumar by the Superintendent of Posts, Pudukkottai is legal and justified? If not, to what relief the workman is entitled?

It is admitted that the Petitioner was engaged as EDDA in the place of the unauthorised absentee, who is a regular incumbent in the post of EDDA Thondamanallur. It is the contention of the Petitioner that the Assistant Superintendent of Post Offices, North Sub Division, Pudukkottai called for applications from the qualified candidates under a local Notification for the post of EDDA, Thondamanallur as that post fell vacant due to the unauthorised absence of regular-holder of that post and that among the candidates appeared for the selection, the Petitioner was found more suitable for appointment and the Asstt. Superintendent of Post Offices, North Sub Division, Pudukkottai selected and appointed the Petitioner vide Memo No. EDDA/MC/TMSSR dated 26-9-94. The Respondent in his counter has clearly averred that the said contention of the Petitioner in his Claim Statement is incorrect and since the regular incumbent for the post was unauthorisedly absent from duty frequently, the Petitioner was engaged by the Branch Postmaster, Thondamanallur as substitute EDDA to look after the duties of EDDA, on his own responsibility with effect from 26-9-94. It is further contended in the Counter that the said regular incumbent expired on 20-5-97 and then the Asstt. Superintendent of Post Offices, North Sub Division, Pudukkottai, to fill up the post called for nominations from the Employment Exchange and the memo dated 26-9-94 of the said Officer is not an appointment order to the Petitioner, but it is an order given to the Postmaster, Pudukkottai, Head Office i.e. the Pay Drawing Authority for drawal of allowances. This has not been disputed or denied by the Petitioner. The said memo dated 26-9-94, referred to in the Claim Statement of the Assistant Superintendent of Post Offices to the Postmaster, Pudukkottai cannot be an appointment order issued by the department

to the Petitioner. The typed copy of the said documents filed by the Petitioner in this Court clearly shows that it is an inter-departmental communication. Further, in that it is stated that Sri K. Kumar, S/o Sri Kaliaperumal, Pudukkottai (BO) has been provisionally appointed as EDDA (BO) with effect from 1-9-94 in the vacancy caused by unauthorised absence of Sri C. Karuppaiah, EDDA/MC, Thondamanallur (BO) as a stop gap arrangement. It is further stated in that letter that eligible allowances may please be drawn and paid to Sri K. Kumar with effect from 1-9-94, until further direction in this regard. So, as it is stated in the Counter of the Respondent that the said memo by the Assistant Superintendent of Post Offices, Pudukkottai cannot be considered as an appointment order issued to the Petitioner Sri K. Kumar. It is not denied that he was allowed to work in that post due to the vacancy caused by the regular incumbent Sri C. Karuppaiah by his unauthorised absence. Further it is seen from that memo, as it is stated in the Counter of the Respondent that the Petitioner was not at all appointed, but he was merely acting as a stop gap arrangement to look after the duties of the post, till the regular candidate is appointed.

7. It is further contended on the side of the Petitioner that despite of a number of representations given by the Petitioner to the Respondent for regularisation of his service, the Respondent has not considered the request of the Petitioner, but on the other hand, had addressed the Employment Exchange for sponsoring candidates for selection. This contention has been denied by the Respondent in Counter as incorrect and they would say that the Assistant Superintendent of Post Offices, North Sub Division, Pudukkottai, took action to fill up the post by calling nomination from the Employment Exchange and the Petitioner's name was also engaged by the Employment Exchange along with eight candidates and the Petitioner though received a communication dated 28-8-1997 from the Asstt. Superintendent of Post Offices, Pudukkottai North Sub Division, informing him to submit his application on or before 10-9-1997, he did not submit his application. That allegation is not denied by the Petitioner. On the other hand, admittedly, the Petitioner had filed 2 O. As before the Central Administrative Tribunal and both the O. As were dismissed by the Central Administrative Tribunal, as there is no merit in the application. Xerox copies of the orders passed in those two O. As by the Central Administrative Tribunal have been filed as Ex. M1 and M2. In Ex. M1, the Hon'ble Central Administrative Tribunal has passed an order stating that 'as the applicant has also been asked to apply for the same post, we do not think that the applicant can have any grievance. We do not think that any question of regularisation arises in such cases'. It is also observed in that order that 'the Respondent department wants to select a person to fill up the post which became vacant and the applicant has been holding the post on a stop-gap basis'. Against this order passed by the Hon'ble Central Administrative Tribunal, the Petitioner has not preferred any Writ Petition before the High Court. Further from the perusal of Ex. M2, another order passed by the same Tribunal in another O.A. No 1266/97 filed by this Petitioner, it is seen that the Hon'ble Central Administrative Tribunal have observed that 'there is no question of considering the applicant's case that he has not applied for that post and that it is made clear in the reply that applicant did not apply for the post before 10-9-1997 and that even assuming that the applicant has been appointed on provisional basis, it is made clear that it is only a stop-gap arrangement as found in the inter-departmental communication and that will not give any right to the applicant to claim the post'. So, these observations and findings of the Central Administrative Tribunal as stated above in the above mentioned two O. As filed by the Petitioner are even now stand good since the Petitioner has not challenged the same by way of Writ Petition before the High Court. It is not denied that the regular incumbent of the post for which the Petitioner is seeking re-employment expired on 20-5-97 and subsequently the department had filled up that post by way of transfer by considering the request of one ED Agent working in another office. So, from this it is seen that the post is not vacant now for the department to reinstate the Petitioner in service. Further as submitted by the Respondent, the Petitioner was not selected through normal recruitment process for the said post but he is only a substitute EDDA engaged by the Branch Postmaster, Thondamanallur on his responsibility for stop-gap arrangement as observed by the

Hon'ble Central Administrative Tribunal in its order under Ex. M1.

8. Learned counsel for the Petitioner would argue that this Petitioner has put in service in that post for more than three years and as per the E.D. Agent (Conduct and Service Rules, candidates who have completed three years has got a vested right to hold the post. To substantiate her stand, she has not produced any rule that has got to be followed by the department. On the other hand, a xerox copy of the Postal E.D. Staff method of recruitment has been filed on the side of the Respondent. In that under Annexure 'A' it is clearly stated how an appointing authority can fill up a post of Extra Departmental Delivery Agent when it becomes vacant. In that it is clearly stated that provisional appointment to the post for a particular period can be made, till the regular appointment is made and it must be made clear to the provisionally appointed person that the appointment will be terminated, when regular appointment is made and he shall have no claim for any appointment to any post and the appointing authority reserves right to terminate the provisional appointment at any time before the period mentioned in that order without notice and without assigning any reason and while a person who sought to be appointed so must accept that conditions and should sign the duplicate copy and return the same to the authority, who sign that order. Further it is stated as one of the rules as follows:—

"Efforts should be made to give alternative employment to E.D. Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than three years. In such cases, their names should be included in the waiting list of ED Agents discharged from service, prescribed in D.G., P&T letter No 43-4/77-Pen. dated 23-2-79."

Here, in this case a vacancy caused to the post of EDDA by the death of regular incumbent one Sri C. Karuppaiah and subsequently that post was filled up by effecting transfer of one such EDDA from another place. So, under such circumstances, the contention of the learned counsel for the Petitioner that the petitioner was not issued with any order of notice for termination and the termination of service of the Petitioner from the post of EDDA, Thondamanallur is bad in law and against the principles of natural justice and in violation of principles enshrined under section 25(f) of the Industrial Disputes Act are incorrect. Her further contention that the Respondent ought to have issued notice or notice pay in lieu of notice before terminating the services of the Petitioner and the failure of the same made the order of termination void abinitio and is liable to be set aside are also incorrect. The Petitioner himself has first admitted that he was not issued with any order of notice for termination. That being the case, he cannot have a declaration that the order of termination is void abinitio and liable to be set aside. On the basis of the materials and particulars available in this case, it can be concluded that there is no violation of principles of natural justice in this case by the Respondent. The Petitioner having not recruited to the post by a selection through a normal recruitment process, but admittedly engaged by the Branch Postmaster, Thondamanallur, on his responsibility as stop-gap arrangement, the Petitioner cannot invoke the provisions of Industrial Disputes Act, 1947, in view of his attempt before the Central Administrative Tribunal, Chennai and obtained an order adverse to him. So under such circumstances, there is no question of regularisation of the post for the Petitioner as referred to in the Schedule of reference will arise. Further, there was no termination of service, since the Petitioner has been relieved from that service soon after the person who got a transfer to that post from another office assumed the office there. So, under such circumstances as there was no scope for any regularisation of that post for the Petitioner, there is no question of non-regularisation and termination of service for Sri K. Kumar by the Superintendent of Post Office, Pudukkottai and hence the action of the Management, the Superintendent of Post Offices, Pudukkottai cannot held to be illegal or unjustified and the Petitioner/Workman is not entitled to any relief. Thus, I answer the point accordingly.

9. In the result, an award is passed holding that there is no scope for regularisation of service and there is no question of termination of service of the Petitioner Sri K. Kumar by the Superintendent of Post Offices, Pudukkottai and hence

the action of the Management, the Superintendent of Post Offices, Pudukkottai in relieving the Petitioner from the post of Extra Departmental Delivery Agent, Thondamanallur, given to him on stop-gap arrangement is legal and justified and the Petitioner/Workman is not entitled to any relief, as prayed for. No Cost.

(Dictated to the Stenographer, transcribed and typed by him and corrected and pronounced by me in the open court on this day, the 2nd May, 2001).

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :

On either side : None.

Documents Marked :

For I Party/Workman : Nil.

For II Party/Management:

Ex. No. Date and Description

M1 22-9 97 Xerox copy of Judgement of Hon'ble CAT, Chennai in OA No. 966/97.

M2 26-10 97 Xerox copy of Judgement of Hon'ble CAT, Chennai, in OA No. 1260/97.

नई दिल्ली, 21 मई, 2001

का. आ. 1353.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में केन्द्रीय सरकार प्रोजेक्ट डायरेक्टर, नेवल बेस के प्रबंधन के संबद्ध नियोजको और उनके कर्मचारों के बीच, अन्वय में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-2001 को प्राप्त हुआ था।

[गं. एल.-14012/9/97-आई आर (डी यू)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 21st May, 2001

S.O. 1353.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Chennai, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Project Director, Naval Base and their workman, which was received by the Central Government on 21-5-2001.

[No. L-14012/9/97-IR(DU)]
KULDIP RAI VFRMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 3rd May, 2001

Industrial Dispute No. 450/2001

(Tamil Nadu Industrial Tribunal I.D. No. 93/1997)

PRESENT:

K. Karthikeyan, Presiding Officer.

(In the matter of the dispute for adjudication under section 10(1)(b) and sub-section 2(A) of the Industrial Disputes Act, 1947, between the Workman Sri K. Uthayasuriyan and the Management the Commanding Officer, Kattabomman Naval Base, Tirunelveli)

BETWEEN

Sri K. Uthayasuriyan,
Tirunelveli.

.... Petitioner's Party

AND

The Commanding Officer,
INS Kattabomman Naval Base,
Tirunelveli. Management/II Party

APPEARANCE :

For the Workman : Sri V. Krishnamurthi, Advocate.

For the Management : Sri M. T. Arunan, Addl. Central Government Standing Counsel.

REFERENCE :

Order No. L-14012/9/97-IR(DU) dated 23/25-9-97
Government of India, Ministry of Labour, New Delhi.

This dispute on coming up before me for final hearing on 10-4-2001, upon perusing the reference, Claim Statement, Counter Statement, documentary evidence marked on either side by consent and other material papers on record and upon hearing the arguments of Sri V. Krishnamurthi, counsel for the Petitioner/Workman and Sri M. T. Arunan, Additional Central Government Standing Counsel for the Management and this dispute having stood over till this date for consideration, this Tribunal passed the following:—

AWARD

This reference by the Central Government in exercise of the powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947, in respect of dispute between Shri K. Uthayasuriyan, Workman and the Commanding Officer, INS Kattabomman Naval Base, Management, mentioned as Schedule appended to the order of reference.

The Schedule reads as follows:—

"Whether order No. 266/1 dated 28-08-1990 terminating Shri K. Uthayasuriyan from the post of Mali issued by the Project Director, Naval Base, Vijayanagaram, Tirunelveli is legal and justified? If not, to what relief the concerned workman is entitled?"

2. This order of reference was first made to Tamil Nadu Industrial Tribunal as an industrial dispute for adjudication and the same was taken on file by that Tribunal as I.D. No. 93/97. On receipt of notices from that Tribunal, both the parties appeared through their counsel and filed their respective Claim Statement and Counter Statement along with documents. When the matter was taken up for enquiry in that Tribunal, on the consent given by either side Ex. W1 to W8 were marked. After adjourning the case for enquiry for so many hearings, this case was transferred to the file of this Court under the orders of transfer by the Central Government and the same was received by this Court and was taken on file on 12-2-2001. After receipt of records of this case on transfer from the Tamil Nadu Industrial Tribunal, this case was taken on file as I.D. No. 450/2001 and notices were sent to the counsel on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal with their respective parties to prosecute this case. Accordingly, the counsel on either side represented and by consent Ex. M1 (series) and M2 were marked. On the representation made by the counsel on either side that there was no more evidence on either side, arguments advanced by them for the respective side was heard and the case was posted for orders to this day.

3 The averments in the Claim Statement are briefly as follows:—

The I Party/Workman Sri K. Uthayasuriyan (hereinafter referred to as Petitioner) joined the service as Civilian Mali in the Naval establishment of the II Party/Management (hereinafter referred to as Respondent). He was appointed by the Commanding Officer, INS Kattabomman Naval Base, Vijayanagaram, Tirunelveli on 19-6-1989 on casual basis. He was appointed for a period of 89 days and his period of service was extended subsequently by giving a break for two days from time to time and was ultimately stopped from work without giving any notice and without following legal provisions as per the Industrial Disputes Act, 1947.

The Petitioner was a permanent worker having been engaged for more than a period of 240 days, he was drawing wages of Rs. 750 per month at the relevant time. The Respondent/Management is an industry, as per section 2(j) of the Industrial Disputes Act, 1947. The Petitioner was working under civilian department of the Management, a worker within the definition of Section 2(s) of the Act. The Management terminated the services of the Petitioner without giving any notice and this amounts to retrenchment as per section 2(oo) of the Industrial Disputes Act, 1947. The Management has not fulfilled the conditions laid down prior to retrenchment as per section 2(f) of the Industrial Disputes Act. No enquiry was also held and no misconduct was attributed against the Petitioner. Therefore, the order of termination is illegal. The Petitioner raised an industrial dispute before the Assistant Labour Commissioner, Madras. The conciliating talks ended in failure. On submission of failure report by the conciliating authority to the Government, the matter has been referred to this Tribunal for adjudication. There is perennial work in the Respondent/Management and there is no reason for retrenching the Petitioner from service. The very fact that the Petitioner was given originally 89 days work which was subsequently extended from time to time with a break for two days in between would clearly show the intention of the Management to scuttle the Petitioner for regularisation. Such an act would amount to unfair labour practice. No notice or any retrenchment compensation as required under Industrial Disputes Act was given to the Petitioner. Hence the order of termination by the Management against the Petitioner is illegal. Because of non-employment for the past eight years, the Petitioner under went great hardships and could not procure employment elsewhere. Hence, it is prayed that the Hon'ble Tribunal may be pleased to set aside the order of termination and direct the Respondent to reinstate the Petitioner in service with all back wages and other attendant benefits.

4. The averments in the Counter Statement of the Respondent/Management/II Party are briefly as follows:—

It is true that the Petitioner was appointed as casual Mali, a non-industrial post, purely on casual basis by Project Skylark and given appointment for a specific period from 19-06-1989 to 15-09-1989 for the first instance, when there was piecemeal work of employment of a specific nature. The Project Director was the appointing authority for civilian casual employees required for the project Skylark. The Petitioner was well aware about the appointment of casual Mali for a specific period and accordingly accepted the employment. As per the provisions of the appointment order, the services of the Petitioner Sri K. Uthayasuriyan stood automatically ceased with effect from 16-9-1989 and subsequently appointed again in the same capacity for the period from 18th September to 15th December, 1989. He was appointed afresh for a further period from 18th December to 31st December, 1989. Then from 2nd January, 1990 to 31st March, 1990 and 2nd April to 29th June, 1990 and 2nd July, 1990 to 29th September, 1990. The services of the Petitioner was finally terminated with effect from 01-09-90, due to his misconduct for which warning letter was also issued. As the Petitioner has not shown any improvement, he has not served continuously for one year or even more than three months. According to Section 2(oo) (bb) of the Industrial Disputes Act 1947, where the appointment order is issued under section 51B is also applicable, hence the Petitioner is not eligible for regularisation. The Petitioner's service was availed by Project Skylark, a specific unit with clear terms of casual employment and provisions for termination of services without notice. He was employed only when there was work and there was no Government sanction for any regular appointment at that time. During the specific period of his casual services, the Petitioner remained unauthorisedly absent from duty, inspite of number of oral/written warning letters on many occasions. There was adverse remarks against the Petitioner and he was served with a warning letter for his unauthorised absence. Therefore the Project Director, Project Skylark under the powers vested with him, has finally terminated the services of the Petitioner with effect from 1st September, 1990. He was paid from the contingency fund allotted for the Project. The Petitioner remained absent from duty without intimation/approval for several times and he never intimated about his whereabouts. He had not replied to the warning notes issued to him and

thereby he was admitting the misconduct on his part. Unauthorised absence without prior permission is a major misconduct and repetition of the same is viewed with serious concern by the administrative authority of Project Skylark, especially the project being a time bound one. Therefore, the termination order issued by the Director, Project Skylark as per rule is a correct action. The Project Skylark was a secret time bound defence project constituted for a specific period by the Government of India, Ministry of Defence, for the establishment of a communication station for the Indian Navy. Project Skylark/INS Kattabomman is non-public utility concern and is not an industry. Being a vital secret defence project Skylark/INS Kattabomman did not fall under the purview of the Industrial Disputes Act, 1947. The said project skylark was not registered under Factories Act. Thus, section 2(j) of Industrial Disputes Act, 1947 stating Skylark Project/INS Kattabomman as an industry was not applicable and there is no scope of application of the definition of 'industry' under section 2(s). The Industrial Relation machinery cannot interfere in the affairs of Project Skylark, as the disputes being taken up with its own higher level through proper channel and the negotiation machinery can use its powers only when the Commanding Officer or Head of Department gives no objection, as the case may be. The Government of India, Ministry of Labour, Chief Labour Commissioner, New Delhi under letter dated 14th October, 1955 addressed to all Regional Labour Commissioners is relevant. Thus, as per section 2(j) of Industrial Disputes Act, 1947, the definition of 'industry' could not be applicable to Project Skylark/INS Kattabomman or Factories Act, 1948. Skylark Project/INS Kattabomman was not dealing with profit oriented activity in its object as a commercial activity. There is no scope for application of Section 25(f) in a case where a particular employee is discharged in exercise of the power conferred by a condition of a service, express or implied, because the employer considers such employee to be unsuitable for the work, there being no question of retrenchment. So, no enquiry is required as per the terms and conditions of a specific tenure of a person temporarily appointed. The Petitioner was never appointed as an industrial employee since this organisation/Naval base is not registered under Factories Act, 1948. The Skylark Project/INS Kattabomman does not fall under the purview of Industrial Disputes Act, 1947. Shri K. Uthayasuriyan was given employment in the capacity of Civilian Mali/Non-Industrial Worker and his services were purely on casual basis for a specific period when there was work. Thus, section 25(f) of the Industrial Disputes Act, 1947 is not at all applicable. The said workman accepted the casual services as and when there was work such as maintenance/cleanliness work. When there was no work as per the casual employment appointment order, his appointment was terminated and he is not at all covered under section 25(f) of the Industrial Disputes Act. He was employed for a specific period for casual services. On the expiry of the specific period he automatically ceased to be in employment. A person engaged in a short time vacancy due to unexpected additional temporary work for the specific period on casual basis ceases to be in employment on expiry of the period of engagement. Therefore, his termination is not illegal and his claim for taking to re-employment is not at all valid. Hence, it is prayed that Hon'ble Tribunal may be pleased to dismiss the Claim Petition as devoid of merits.

5. The point for my consideration is "whether Order No. 266/1 dated 28-8-1990 terminating Shri K. Uthayasuriyan from the post of Mali issued by the Project Director, Naval Base, Vijayanarayanam, Tirunelveli is legal and justified? If not, to what relief the concerned workman is entitled?"

6. The learned counsel for the Petitioner/Workman would contend that the work for which the Petitioner has been appointed is in perennial in nature but just to avoid coming under the provisions of Industrial Disputes Act, the Management has given him appointment with a break of two or three days in between. As such, he was given appointment on casual basis from 19-6-89 for a period of 89 days and such period was extended subsequently by giving artificial break of two days from time to time. Six such appointment orders were given by the Management to the Petitioner/Workman. Xerox copies of the same are Ex. W1 to W6. When the first appointment period expired on 15-9-89, he was given next appointment from 18-9-89 till 15-12-89 and again 18-12-89 to 31-12-89 and from 2-1-90 to 31-3-90 and then from 2-4-90 to 29-6-90 and finally from 2-7-90 to 29-9-90. He was given finally a termination order dated 28-8-90 discharging him from duty on 1-9-90. Thus, this workman having been engaged for more than a period of

240 days come well within the purview of the Industrial Disputes Act, 1947 and he is a worker within the definition of Section 2(s) of the Act. This type of appointment amounts to practice of adhocism and it is wholly arbitrary and suffers from vice of discrimination as held by the Supreme Court in a decision reported as AIR 1991 SC 1286 between Sri Rabinarayan Mohapatra and State of Orissa and others. In that case, the Supreme Court has held that the appointment of a teacher on 89 days basis with one day break, which deprives a teacher of his salary for the period of summer vacation and other service benefits is wholly arbitrary and suffers from the vice of discrimination. The learned counsel for the Petitioner further contended that such termination amounts to retrenchment and also amounts to unfair labour practice. The Management ought to have followed the procedure of the Industrial Disputes Act. No notice under section 25(f) was given to the Petitioner/Workman and no reason was given for the termination of service and no opportunity was given to the workman to explain his stand for the alleged misconduct. Further, no retrenchment pay also given. Hence, the termination of service of the Petitioner/Workman by the Respondent/Management is illegal and unjust. Hence, this Hon'ble Tribunal may pass an award holding that the action of the Management/Respondent against the Petitioner/Workman in terminating the services is illegal and unjustified and the Management may be directed to reinstate him in service with back wages with other attendant benefits.

7. The learned counsel for the Respondent would argue that the Petitioner was appointed as casual Mali, a non-industrial post purely on casual basis by the Project Skylark and he was given appointment for a specific period on different occasions. He was given piecemeal work of employment of a specific nature. The Project Director, Project Skylark was the appointing authority for civilian casual employees required for the project. As such, the Petitioner/Workman was given employment as casual Mali and he was well aware about his appointment as a casual labour. As per the provisions of appointment order, his services stood automatically ceased with effect from the date on which the period comes to an end. Further, he was finally terminated with effect from 1-9-90 due to his misconduct for which a warning letter was also issued. Since the Petitioner had not shown any improvement in his conduct, his services were terminated. He had not served for continuous stretch of one year or even more than three months. According to Section 2(oo)(bb) of the Industrial Disputes Act, where the appointment order is issued under section 51B is also applicable and he is not eligible for regularisation. His services were availed by the Project Skylark for a specific period by issuing separate appointment order, when there was work for each specific period with clear terms of casual employment and provisions for termination of service without notice. He was appointed only when there was work and there was no Government sanction for any regular appointment of that post. Further, the Petitioner remained unauthorisedly absent from duty, despite a number of oral and written warning and letters. During February, 1990, he remained absent for 8th, 9th and 20th to 28th February, 1990 and during April, he was absent from 6th 15th and during June 11 days from 1st to 11th June, 1990. In the warning letter of original or Ex. M2, the Petitioner/Workman has been informed that his services will be terminated if he involves himself in the habit of remaining absent from duty without prior permission, without giving any further notice to him. So, under the powers vested with the appointing authority, the Project Director, Project Skylark finally terminated the services of the Petitioner with effect from 1-9-1990. For the unauthorised absence, though warning notices were issued to the Petitioner, he had chosen not to reply the same and thereby he was admitting his misconduct of unauthorised absence without prior permission. Further the Petitioner was paid from the contingency fund allotted for the Project. The termination order was issued as per rule by the Director, Project Skylark. It is a time-bound defence project constituted for a specific period by the Govt. of India, Ministry of Defence for establishment of a communication station for the Indian Navy. The said project is a non-public utility concern and is not an industry. Being a vital secret defence project did not fall under the purview of the Industrial Disputes Act, 1947. It was not registered under Factories Act. Thus, Section 2(j) of the Industrial Disputes Act is not applicable to Skylark Project/INS Kattabomman

as an industry. So, there is no scope of application of definition of 'industry' under section 2(2) of the Industrial Disputes Act. The Industrial Relation machinery cannot interfere with the affairs of the Project Segmark. The Govt. of India, Ministry of Labour, Chief Labour Commissioner, New Delhi's letter No. CON/8(23)/55 dated 14-10-1955 addressed to all Regional Labour Commissioners is relevant. Thus, as per Section 2(j) of Industrial Disputes Act, 1947 the definition of 'industry' would not be applicable to the Project Skylark/INS Kattabomman or Factories Act, 1948. In the above said letter, all Regional Labour Commissioners, Ministry of Labour dated 14-10-1955 on the subject or negotiating machinery for settlement of disputes between the civilians employed in defence installations, as stated that unless the parties have exhausted the remedies available through the departmental machinery, the industrial relation machinery cannot taken cognisance of such disputes. The defence installations are largely non-public utility concerns and the Industrial Disputes Act, 1947 gives discretion to the conciliation officers to intervene or not. So from that communication by the Chief Labour Commissioner to all the Regional Labour Commissioners, it is seen that before our concern the civilians employed in defence installations approach this Industrial Relation machinery ought to have exhausted his remedies available through departmental machinery at the lower level, middle level and at the top level according to the provisions laid down under the Constitution of negotiating machinery for settlement of disputes between the civilian employed in defence installations. Admittedly, in this case, the Petitioner/Workman has not exhausted all those remedies. The learned counsel for the Respondent has further contended that in the case reported as 1973 26 FLR 89 between Management of Station Canteen Vs. Presiding Officer, Labour Court, it is held that the canteen run by the Army Headquarters at Bangalore was not run on commercial basis. The dominant object in running the canteen appeared to be one of rendering assistance or aid to defence personnel who alone were entitled to buy goods from the canteen. Hence Canteen was not an industry within the meaning of Section 2(j) of the Act and therefore, the dispute between the Management and the Workman could not be an industrial dispute. Like that, the present dispute between Petitioner/Workman and the Management which is admittedly Govt. of India, Ministry of Defence, established for the communication station for the Indian Navy, it cannot be considered as an industry under section 2(s) of the Industrial Disputes Act. Further, he has relied upon the case reported as 1989 58 FLR 173(KAR) Mangalore University Non-Teaching Employees Association Vs. Mangalore University and ANR. In that case, it is held that in view of Section 2(oo)(bb) of the Industrial Disputes Act, when the tenure of a person temporarily appointed under section 51B is fixed by that section as also by the relevant statute for six months and appointments were made under those provisions, termination of service of a temporary employee in accordance with the condition of appointment does not amount to retrenchment at all and consequently Section 25F would not at all be attracted. This decision of the Karnataka High Court is squarely applicable to the facts of this present case. Further, the decision of the Supreme Court referred to by the learned counsel for the Petitioner is not applicable to the present facts of this case, because as per the cited Supreme Court cases, it is with regard to an appointment of a Teacher in the technical institution. So, under such circumstances on the basis of the available facts in this case, it is seen that the Petitioner/Workman was engaged as a casual civilian Mali by the Director of Project Skylark, a non-public utility concern, constituted for a specific period by the Govt. of India, Ministry of Defence, establishment of communication station for Indian Navy. So, it cannot be considered as an industry and such being the case, when the Petitioner/Workman has a casual employment as per his appointment order and was terminated by that order, he cannot avail the benefit under section 25(f) of the Industrial Disputes Act. On the expiry of the specific period of employment, he automatically ceased to be in employment. Therefore, termination of services of the Petitioner/Workman by the Respondent/Management under Ex. W7 is legal and justified and the Petitioner concerned workman is not entitled to any relief. Thus, I answer the issue accordingly.

8. In the result, an award is passed holding that the Petitioner/Workman is not entitled to any relief, as prayed for. No cost.

(Dictated to the Stenographer, transcribed and typed by him and corrected and pronounced by me in the open court on this day, the 3rd May, 2001.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :

On either side : None.

Documents Marked :

For I Party/Workman :

Ex. No. Date and Description

W1 20-6-89 Xerox copy of to the I Party from Project Director, Project Skylark Appointment Order for the period from 19-6-89 to 15-9-89.

W2 12-9-89 —do— 18-9-89 to 15-12-89.

W3 7-11-89 —do— 18-12-89 to 31-12-89.

W4 14-12-89 —do— 2-1-90 to 31-3-90.

W5 26-3-90 —do— 2-4-90 to 29-6-90.

W6 30-6-90 —do— 2-7-90 to 29-9-90.

W7 28-8-90 Termination Order from Project Director to the I Party.

W8 1-4-92 Letter seeking reinstatement by Petitioner to the Project Director.

For II Party/Management :

Ex. No. Date and Description

M1 Series (1) 30-6-90 Xerox copy of the Appointment Order to the I Party from the Project Director, Project Skylark for the period from 2-7-90 to 29-9-90.

M1 Series (2) 26-3-90 —do— 2-4-90 to 29-6-90.

M1 Series (3) 14-12-89 —do— 2-1-90 to 31-3-90.

M1 Series (4) 7-11-89 —do— 18-12-89 to 31-12-89.

M1 Series (5) 12-9-89 —do— 18-9-89 to 15-12-89.

M1 Series (6) 20-6-89 —do— 19-6-89 to 15-9-89.

M2 25-6-90 Warning letter from the Project Manager to the I Party.

नई दिल्ली, 25 मई, 2001

का. आ. 1354.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार बेसिक केमिकल् फार्मास्यूटिकल्स एण्ड कॉस्मेटिक्स एक्सपोर्ट प्रमोशन काउंसिल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अन्वय में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. II, मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-2001 को प्राप्त हुआ था।

[सं. एल.-42011/6/2000-आई आर (डी यू)]
कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 25th May, 2001

S.O. 1354.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal/Labour Court, No. II, Mumbai, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Basic Chemicals, Pharmaceuticals and Cosmetic Export Promotion Council and their workman, which was received by the Central Government on 25-5-2001.

[No. L-42011/6/2000-IR(DU)]
KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT :

S. N. Saundankar.

REFERENCE No. CGIT-2/38 of 2000

Employers in Relation to the Management of Addl. Exe. Director, Basic Chemicals, Pharmaceuticals and Cosmetic Export Promotion Council, Jhansi Castle, 4th Floor, 7-Cooperage Road, Mumbai-400039.

AND

Their Workmen

General Secretary, Chemical Employees Assn., Jhansi Castle, 4th Floor, 7-Cooperage Road, Mumbai-400039.

APPEARANCES :

For the Employer : Mr. A. B. Ketkar, Representative.

For the Workmen : Mr. A. T. Nagare, Representative.
Mumbai, dated 30th March, 2001

AWARD

The Government of India, Ministry of Labour, by its Order No L-42011/6/2000/IR(DU), dated 31-5-2000, have referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Basic Chemicals Pharmaceuticals and Cosmetics Export Promotion Council, Mumbai by not providing the facilities of Fifth Pay Commission and stopping of Dearness Allowances from 1-7-97 is justified? If not, to what relief the employees are entitled?"

2. Pursuant to the reference the General Secretary Mr. A.T. Nagare of Chemical Employees Association, Mumbai filed Statement of Claim (Exhibit-6) which was resisted by the management vide Written Statement (Exhibit-7). After framing the issues in the light of the rival pleadings the matter was fixed to 27-3-2001 for evidence. However on 22-3-2001 the parties concerned, by the application (Exhibit-13) apprised the Tribunal that they have settled the dispute out of Court, vide settlement deed (Exhibit-14). Since the reference has been settled the following order is passed :—

ORDER

Reference stands disposed of as settled vide Deed (Ex-14).

S. N. SAUNDANKAR, Presiding Officer

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 AT MUMBAI

REFERENCE NO. CGIT-2/38 OF 2000

BETWEEN

BASIC CHEMICALS, PHARMACEUTICALS AND COSMETICS EXPORT PROMOTION COUNCIL

AND

WORKMEN EMPLOYED UNDER THEM

(Chemexcil Employees' Association)

MAY IT PLEASE THIS HON'BLE TRIBUNAL

1. It is submitted that both the parties in the above Reference have mutually settled the subject matter. The terms of settlement are annexed hereto and marked as Exhibit 'A'.

2. It is, therefore, prayed that the above Reference be kindly disposed off in terms of the said Settlement.

Mumbai, dated this 22nd day of March, 2001

For the first party Council

For the Association

Sd/-Illegible

Sd/- Illegible.

Advocate

Advocate

Read and Recorded

Sd/-Illegible.

Presiding Officer.

EXHIBIT 'A'

IN THE CENTRAL INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 2 AT MUMBAI

Reference No. 2/38 of 2000

BETWEEN

BASIC CHEMICALS, PHARMACEUTICALS COSMETIC EXPORT PROMOTION COUNCIL

AND

WORKMEN EMPLOYED UNDER THEM

MAY IT PLEASE THE HON'BLE TRIBUNAL

The parties hereto have after mutual discussion arrived at a settlement about implementation of the recommendation of the Central Vth Pay Commission and pray that an award in terms of the settlement be passed.

TERMS OF SETTLEMENT

1. The parties hereto agree to revision of the salary on the following conditions :

- (a) The revised enhanced salary for the employees for the period 1-1-96 to 28-2-01 will be limited to 65% of the difference between the existing salary and the salary worked out on the basis of recommendations of the Vth Pay Commission.
- (b) The revised pay scale, basic pay and the dearness allowance as on from 1-3-2001 will be as per the recommendations of the Vth Pay Commission.
- (c) So far as City Compensatory Allowance (CCA) is concerned, the parties agree that the Council shall pay it at 50% of the Vth Pay Commission recommendation.
- (d) So far as House Rent Allowance (HRA) is concerned, the Council will pay the same at 8% of the Basic Pay instead of 30%.
- (e) Employer/employee contributions to Provident Fund will be enhanced to 12 per cent from the present 10 per cent w.e.f. 1-10-1997.
- (f) The statement hereto annexed gives the details of the fixation of the Salaries and allowances as per the above understanding.

2. The existing other service conditions will continue to be in force.

3. It is agreed that the workmen will maintain strict discipline, adopt latest technology and its applications for promotion of exports and maintain high standard of efficiency to be able to meet the challenges of globalisation and maximize the exports for which the Council is formed.

4. The revision in salary as per Clause (1) above will be made with effect from 1st January, 1996. The arrears arising out of the settlement will be paid within one month of the passing of the award by the Hon'ble Tribunal.

Mumbai this 21st day of March, 2001

For Chemexcil's Employees Association

For Basic Chemicals Pharmaceuticals and Cosmetics Export
Promotion Council

A. T. NAGRARE, General Secy.

A. B. KETKAR, Asstt. Director

Witnesses :

RAJU VARGHESE, Jt. Secy.

S. G. BHARADI, Accounts Officer

Basic Chemicals, Pharmaceuticals and Cosmetics Export Promotion Council
Revised Pay Scales as per the norms of Vth Pay Commission

| Sr. No. | Post | Present Scale | Revised Scale |
|------------|---------------------|--------------------------|-----------------|
| 1 | 2 | 3 | 4 |
| 1. | Executive Director | 4500-150-5700 | 14300-400-18300 |
| 2. | Addl. Exe. Director | 3000-100-3500-125-4500 | 10000-325-15200 |
| 3. | Dy. Director | 3000-100-3500-125-4500 | 10000-325-15200 |
| 4. | Assistant Director | 2200-75-2800-EB-100-4000 | 8000-275-13500 |

| Sr. No. | Post | Present Scale | Revised Scale |
|---------|-----------------------|----------------------------------|----------------------|
| 1 | 2 | 3 | 4 |
| 5 | Regional Officer | 2000-60-2300-EB-75-3200-100-3500 | 6500-200-10500 |
| 6 | Accounts Officer | 2000-60-2300-EB-75-3200-100-3500 | 6500-200-10500 |
| 7 | Senior Assistant | 1640-60-2600-EB-75-2900 | 5500-175-9000 |
| 8 | Junior Assistant | 1400-40-1600-50-2300-EB-60-2600 | 5000-150-8000 |
| 9 | U.D.C | 1200-30-1560-EB-40-2040 | 4000-100-6000 |
| 10 | L.D.C | 950-20-1150-EB-25-1500 | 3050-75-3950-80-4590 |
| 11 | Machine Operator (Sr) | 1200-30-1440-EB-30-1800 | 4000-100-6000 |
| 12 | Machine Operator (Jr) | 975-25-1150-30-1660 | 3700-85-4990 |
| 13 | Staff Car Driver | 950-20-1150-EB-25-1500 | 3050-75-3950-80-4590 |
| 14 | Peon | 800-15-1010-20-1150 | 2650-65-3300-70-4000 |
| 15 | Peon | 750-12-870-15-14-940 | 2550-55-2660-60-3200 |

Sd/-

For Chemexcl Employee's Association

Sd/-

For Basic Chemicals, Pharmaceuticals & Cosmetics Export

Promotion Council

Salary for the month of March, 2001

| Sr. No. | Name of the Officers | Basic Pay | Spl. Pay | D.A. | H.R.A. 8% | C.C.A | Total |
|---------|----------------------|-----------|----------|-------|-----------|-------|-------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 1. | Ms. A. Tulsiani | 12600 | | 5166 | 1008 | 150 | 18924 |
| 2. | Mr. A. B. Ketkar | 10475 | | 4295 | 838 | 150 | 15758 |
| 3. | Mr. S. G. Bharadi | 7300 | | 2993 | 584 | 150 | 11027 |
| Total | | 30375 | | 12454 | 2430 | 450 | 45709 |

| Sr. No. | Name of the Staff | Basic Pay | Spl. Pay | D.A. | H.R.A. 8% | C.A. | Total |
|---------|--------------------------|-----------|----------|------|-----------|------|-------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 1. | Mrs. P. R. Tavarai | 8475 | | 3475 | 678 | 150 | 12778 |
| 2. | Mr. M. A. Patil | 7600 | 175 | 3116 | 608 | 150 | 11649 |
| 3. | Mr. G. S. Naik | 7600 | 175 | 3116 | 608 | 150 | 11649 |
| 4. | Mr. J. B. Paradkar | 7775 | | 3188 | 622 | 150 | 11735 |
| 5. | Mr. P. B. Potdar | 7600 | | 3116 | 608 | 150 | 11474 |
| 6. | Mr. H. K. Pande | 7250 | | 2973 | 580 | 150 | 10953 |
| 7. | Mrs. M. George | 7425 | | 3044 | 594 | 150 | 11213 |
| 8. | Mr. M. R. Sawant | 6200 | | 2542 | 496 | 150 | 9388 |
| 9. | Mr. U. J. Rajhans | 6800 | | 2788 | 544 | 150 | 10282 |
| 10. | Mrs. A. S. Tendulkar | 6800 | 150 | 2788 | 544 | 150 | 10432 |
| 11. | Ms. A. Lothkar | 6050 | | 2481 | 484 | 150 | 9165 |
| 12. | Mr. Raju Verghese | 6050 | | 2481 | 484 | 150 | 9165 |
| 13. | Mrs. T. A. Parulekar | 5900 | | 2419 | 472 | 100 | 8891 |
| 14. | Mr. R. Bala | 5900 | | 2419 | 472 | 100 | 8891 |
| 15. | Mr. K. S. Gopal Krishnan | 6725 | | 2757 | 538 | 150 | 10170 |
| 16. | Mr. V. R. Nair | 6200 | | 2542 | 496 | 150 | 9388 |
| 17. | Mr. V. K. Sarode | 6200 | | 2542 | 496 | 150 | 9388 |
| 18. | Mrs. S. S. Jadhav | 4900 | | 2009 | 392 | 100 | 7401 |
| 19. | Mr. S. J. Balani | 4700 | | 1927 | 376 | 100 | 7103 |
| 20. | Mrs. S. V. Ghonge | 4700 | | 1927 | 376 | 100 | 7103 |
| 21. | Mr. A. T. Nagrale | 4600 | | 1886 | 368 | 100 | 6954 |
| 22. | Mr. P. K. Kumar | 4600 | | 1886 | 368 | 100 | 6954 |

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|-------|---------------------|--------|-----|-------|-------|------|--------|
| 23. | Mr. R. S. Gole | 4500 | | 1845 | 360 | 100 | 6805 |
| 24. | Mr. S. R. Mhatre | 4500 | | 1845 | 360 | 100 | 6805 |
| 25. | Mr. Mohankumar | 3875 | | 1589 | 310 | 65 | 5839 |
| 26. | Mrs. J. E. Lawrence | 3725 | | 1527 | 298 | 65 | 5615 |
| 27. | Mr. S. W. Bhosle | 3500 | | 1435 | 280 | 65 | 5280 |
| 28. | Mrs. G. M. Tulaskar | 3425 | | 1404 | 274 | 65 | 5168 |
| 29. | Ms. Kalpana Rane | 3425 | | 1404 | 274 | 65 | 5168 |
| 30. | Mrs. A. A. Kelkar | 3350 | | 1374 | 268 | 65 | 5057 |
| 31. | Mrs. Geeta Waghmare | 3350 | | 1374 | 268 | 65 | 5057 |
| 32. | Mrs. S. S. Taral | 3350 | | 1374 | 268 | 65 | 5057 |
| 33. | Mr. V. Z. Agre | 5300 | | 2173 | 424 | 100 | 7997 |
| 34. | Mr. G. H. Salian | 5300 | | 2173 | 424 | 100 | 7997 |
| 35. | Mr. M. L. Valmiki | 3430 | | 1406 | 274 | 65 | 5175 |
| 36. | Mr. S. L. Valmiki | 3300 | | 1353 | 264 | 65 | 4982 |
| 37. | Mr. S. G. Dhete | 2960 | | 1214 | 237 | 45 | 4455 |
| 38. | Mr. V. S. Appu | 2900 | | 1189 | 232 | 45 | 4366 |
| 39. | Mr. U. R. Patil | 2900 | | 1189 | 232 | 45 | 4366 |
| 40. | Mr. S. S. Zagde | 2840 | | 1164 | 227 | 45 | 4276 |
| Total | | 205980 | 500 | 84452 | 16478 | 4180 | 311589 |

Salary for the month of March, 2001

Regional Office—Bangalore

| Sr. No. | Name of the Officers | Basic Pay | Spl. Pay | D.A. | H.R.A. 8% | C.A. | Total |
|---------|-----------------------|-----------|----------|------|-----------|------|-------|
| 1. | Mrs. R. Rajanibai | 7700 | | 3157 | 616 | 150 | 11623 |
| 2. | Mr. B. Ramesh | 6200 | | 2542 | 496 | 150 | 9388 |
| 3. | Mr. K. E. Sureshkumar | 4600 | | 1886 | 368 | 100 | 6954 |
| 4. | Mr. S. Rama | 2780 | | 1139 | 222 | 45 | 4186 |
| Total | | 21280 | | 8724 | 1702 | 445 | 32151 |

Regional Office—Calcutta

| Sr. No. | Name of the Staff | Basic Pay | Spl. Pay | D.A. | H.R.A. 8% | C.A. | Total |
|---------|---------------------|-----------|----------|-------|-----------|------|-------|
| 1. | Mr. Apurba Aich | 7900 | | 3239 | 632 | 150 | 11921 |
| 2. | Mr. V. Subramaniam | 6200 | | 2542 | 496 | 150 | 9388 |
| 3. | Mr. S. N. Mhatre | 4900 | | 2009 | 392 | 100 | 7401 |
| 4. | Mrs. M. Subramaniam | 4600 | | 1886 | 368 | 100 | 6954 |
| 5. | Mr. Ganpat Rai | 3440 | | 1410 | 275 | 65 | 5190 |
| Total | | 27040 | 0 | 11086 | 2163 | 565 | 40854 |

Regional Office—Delhi

| Sr. No. | Name of the Staff | Basic Pay | Spl. Pay | D.A. | H.R.A. 8% | C.A. | Total |
|---------|-------------------|-----------|----------|------|-----------|------|-------|
| 1 | Mr. Dvinder Kumar | 3140 | | 1287 | 65 | 251 | 4743 |
| Total | | 3140 | | 1287 | 65 | 251 | 4743 |

Sd/-

Sd/-

For Chemexcil Employees Association

For Basic Chemicals, Pharmaceuticals & Cosmetics Export
Promotion Council

नई दिल्ली, 25 मई, 2001

ANNEXURE

का. आ. 1355:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार में, रिचर्डसन एंड क्रुड्डास लिमिटेड (1972) के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में, निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. II, मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-2001 को प्राप्त हुआ था।

[सं. एल-42011/57/98-आई आर (डीयू)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 25th May, 2001

S.O. 1355.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal/Labour Court, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Richardson and Cruddas Ltd. (1972) and their workman, which was received by the Central Government on 25-5-2001.

[No. L-42011/57/98-IR(DU)]
KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT :

S. N. Saundankar.

REFERENCE NO. CGIT-2/119 of 1999

Employers in relation to the Management of
M/s. Richardson and Cruddas Ltd. (1972)
The Genl. Manager (IR),
Richardson and Cruddas Ltd. (1972),
Byculla Iron Works,
Byculla,
Mumbai 400008.

AND

Their Workmen

The President,
Association of Engineering Workers,
252, Janta Colony,
Ramnarayan Narker Marg,
Ghatkopar (East)
Mumbai-400077.

APPEARANCES :

For the Employer : Mr. S. Z. Chowdhary, Advocate.

For the Workmen : Mrs. P.A. Kulkarni, Advocate.

Mumbai, dated 23rd March, 2001

AWARD

The Government of India, Ministry of Labour, by its Order No. L-42011/57/98/IR(DU), dated 26-4-1999 have referred the following Industrial Dispute for adjudication.

"Whether the action of the management of M/s. Richardson and Cruddas (1972) Ltd., Byculla Iron Works, Byculla Mumbai-400008 in not regularising the services of workmen (as per Annexure) is legal and justified? If not, to what relief the workmen are entitled?"

| Sr. No. | Name of the employee/workman | Ticket No. | Date of joining |
|---------|------------------------------|------------|-----------------|
| 1. | Shri M.B. Rajbhar | 6119 | 15-3-1982 |
| 2. | „ R.M. Rajbhar | 6050 | 27-4-1982 |
| 3. | „ P.R. Kamble | 6051 | 27-4-1982 |
| 4. | „ R.S. Rajbhar | 6054 | 4-5-1982 |
| 5. | „ S.N. Nile | 6058 | 20-5-1982 |
| 6. | „ R.M. Shaikh | 6064 | 8-10-1984 |
| 6. | „ M.N. Bansode | 6065 | 2-1-1985 |
| 8. | „ V.R. Bhosle | 6068 | 26-3-1985 |
| 9. | „ V.M. Bhalerao | 6072 | 15-4-1985 |
| 10. | „ K.T. Batkar | 6074 | 16-4-1985 |
| 11. | „ F.R. Rajbhar | 6077 | 17-4-1985 |
| 12. | „ H.K. Jaiswar | 6079 | 21-5-1985 |
| 13. | „ S.M. Khamakar | 6075 | 16-4-1985 |

2. The union filed a Statement of Claim at Exhibit-10. The employer opposed the claim by their written statement (Ex-12). The President of the union filed Rejoinder at Exhibit-15. On the basis of the rival pleadings my Learned Predecessor framed issues at Exhibit-16. Consequently matter was fixed for leading evidence. However the union by pursis (Ex-19) contended that the workmen concerned, have accepted voluntary retirement and therefore the dispute has been amicably settled, which the management concede vide say dated 1-2-2001. Since dispute no more survives, the following order is passed:

ORDER

The reference stands disposed of for want of prosecution vide Purshis (Exhibit-19).

23-3-2001.

S. N. SAUNDANKAR, Presiding Officer

BEFORE HON'BLE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II

Reference No. CGIT/119 of 1999

BETWEEN

M/s. Richardson and Cruddas (1972) Ltd.

AND

Association of Engineering Workers

MAY IT PLEASE THIS HON'BLE TRIBUNAL

The Association submits that all the workmen concerned in this Dispute have accepted Voluntary Retirement Scheme and now have no claim of any nature against the company, therefore this Hon'ble Tribunal may be pleased to pass no dispute award in this matter.

Place : Mumbai.
Dated 5-1-2001.

SAHADEO SAMBHAJI, MALAYE

For and on behalf of
Association of Engineering Workers

P. A. Kulkarni,
Abhay Kulkarni and Associates,
Advocate for the Association.

नई दिल्ली, 23 मई, 2001

का. आ. 1356:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अर्चना एअरवेज लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में, निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-5-2001 को प्राप्त हुआ था।

[सं. एल.-11012/18/2000-आई आर (सी-I)]

एस. एस. गुप्ता, अवसर सचिव

New Delhi, the 23rd May, 2001

S.O.—1356.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Archana Airways Ltd. and their workman, which was received by the Central Government on 22-5-2001.

[No. L-11012/18/2000-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE SHRI K. S. SRIVASTAV : PRESIDING OFFICER : CENTRAL GOVT. INDUSTRIAL TRIBUNAL : NEW DELHI

I.D. No. 27/2000

Shri Abdul Kayum S/o Shri Alauddin, Village-Osika, P.O. & The Barot, Distt. Bagpat (U.P.)
C/o Anil Kumar Tripathi, C-165A, Opp. Post Office Tis Hazari Court, Delhi-54.

Versus

The Managing Director, M/s. Archana Airways Ltd., 41-A, Friends Colony (East), Mathura Road, New Delhi-65.
APPEARANCES :

Shri Abdul Kayum in person.

Shri Parveen Arora Personal Assistant for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-11012/18/2000-IR (C-I) dated 17-2-2000 has referred the following industrial dispute to this Tribunal for adjudication :—

“Whether the action of M/s. Archana Airways Ltd. in stopping Shri Abdul Kayum S/o Shri Allaudin Ex. Security Guard from service w.e.f. 1-4-99 is just and legal? If not to what relief is the workman entitled?”

2. Statement of claim, counter statement and rejoinder were exchanged in the case. The workman's case was that he was employed in the management as Security Guard since 4-8-94 and his last drawn wage was Rs. 3000/- PM. Workman has stated that on account of serious illness of his father he has gone to his village on 12-3-99 after giving proper information

to the management and it was on 1-4-99 he had returned from his village and went to join his duties but he was not permitted by the Management to join his duties. Management forcibly took his signatures on some blank papers in the presence of 3 or 4 person when he had gone to settle the dispute with the Management on 11-4-99. He was then turned out from the factory on the instructions of Shri R. K. Mittal and was threatened with a dire consequences. The Management did not pay him salary for 12 days for the month of March, 99.

3. On behalf of the Management the workman's case has been denied; that the workman's services were actually terminated by the Management and it is asserted that the workman had himself tendered his resignation on account of domestic problems vide resignation letter dated 12-4-99 copy of which has been enclosed as Annexure 'A'. The Management has also denied that the workman had any time gone to settle his accounts. Actually workman was offered to settle the dues before the Conciliation Officer (Central) Delhi but he did not agree.

4 In the rejoinder the workman has reiterated his case.

5. Now the workman has moved this application that he has settled his dispute with the management out of court and he has also received Rs. 6000/- through D.D. No. 509136 dated 9-5-2001 drawn on U.C.O. Bank Sansad Marg, New Delhi. He has thus prayed for the withdrawal of his case. On behalf of the Management it is not objected.

6. In view of the Fact a No Dispute Award in the case is given.

May 18, 2001.

K. S. SRIVASTAV, Presiding Officer

नई दिल्ली, 23 मई, 2001

का. आ. 1357.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एअर इण्डिया लिमिटेड के प्रबंधन के संबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-5-2001 को प्राप्त हुआ था।

[सं. एल.-11012/40/98-आई आर (सी-I)]

एस. एस. गुप्ता, अवसर सचिव

New Delhi, the 23rd May, 2001

S.O. 1357.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Air India Ltd. and their workman, which was received by the Central Government on 22-5-2001.

[No. L-11012/40/98-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE SHRI K. S. SRIVASTAV : PRESIDING
OFFICER : CENTRAL GOVT. INDUSTRIAL
TRIBUNAL : NEW DELHI

I.D. No. 52/99

In the matter of dispute between :

Shri Sudheer Kumar Bhatti & Ravinder Kumar,
Ex-Guards, C/o All India General Trade Union

(Regd.)

163, Balmukund Khand, Giri Nagar,
Kalkaji, New Delhi-110019.

Versus

The Manager,
M/s. Ex-Serviceman Transport Limited,
Yashwant Palace,
62, Chankyapuri, New Delhi.

APPEARANCES :

None for the workman.

Shri Jorgay Nanka for the Management.

AWARD

The Central Government in the Ministry of Labour
vide its Order No. L-11012/40/98-IR (C-I) dated
17-2-99 has referred the following industrial dispute
to this Tribunal for adjudication :—

“Whether the security guards working as contract
Labourers in the estt. of M/s. Air India Ltd.
for number of years just before judgment of
Supreme Court in “Air India Statutory Cor-
poration etc.” are entitled preferential treat-
ment for recruitment in the estt.?”

2. After the receipt of the reference which was
registered and notices to the parties for filing their
written submissions were issued vide order dated
23-2-99. The workman did not appear on any of the
date fixed in the case. Registered notices were also
sent to him twice on his correct address as borne out
from the record. The workman despite it failed to
appear in the case and statement of claim could not
be filed. On behalf of the Management appearance
was put in and the management representative had
appeared almost on every date fixed in the case. Ulti-
mately when neither statement of claim could be filed
by the workman nor he put in appearance in the case,
vide order dated 11-5-2001 directions for proceeding
exparte against the workman was given and award was
reserved.

3. In view of the fact that the workman has not
filed any statement of claim in the case it is found
that he has no claim and a No Dispute Award is
passed/given in the case.

May 18, 2001.

K. S. SRIVASTAV, Presiding Officer

नई दिल्ली, 23 मई, 2001

का. भा. 1358:—औद्योगिक विवाद अधिनियम,
1947 (1947 का 14) की धारा 17 के अनुसरण में,
केन्द्रीय सरकार सिंगापुर एअरलाइंस के प्रबंधन के संबद्ध
नियोजकों और उनके कर्मचारों के बीच, अग्रबंध में निर्दिष्ट
औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण,
चेन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार
को 22-5-2001 को प्राप्त हुआ था।

[सं. एल. 11012/95/98-आई आर (सी-I)]

एल. एन. गुप्ता, अवर सचिव

New Delhi, the 23rd May, 2001

S.O. 1358.—In pursuance of Section 17 of the
Industrial Disputes Act, 1947 (14 of 1947), the Cen-
tral Government hereby publishes the award of the
Central Government Industrial Tribunal, Chennai as
shown in the Annexure in the Industrial Dispute be-
tween the employers in relation to the management of
Singapore Airlines and their workman, which was re-
ceived by the Central Government on 22-5-2001.

[No. L-11012/95/98-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, CHENNAI

Tuesday, the 1st May, 2001

PRESENT :

K. Karthikeyan, Presiding Officer.

Industrial Dispute No. 116/2001

(Tamil Nadu Industrial Tribunal I.D. No. 70/99)
(In the matter of the dispute for adjudication under
section 10(1)(d) and sub-section 2(A) of the Indus-
trial Disputes Act, 1947), between Sri K. Sridhar,
Chennai and the Station Master, Singapore Airlines,
Chennai.)

BETWEEN

Shri K. Sridhar,
Chennai.

... Workman/I Party.

AND

The Station Master,
Singapore Airlines,
Madras International Airport,
Chennai.

... Management/II Party.

APPEARANCE :

For the Workman—Shri K. Sivajothi, Advocate.

For the Management—M/s. King & Patridge,
Advocate.

AWARD

The Government of India, Ministry of Labour in
exercise of powers conferred by Clause (d) of sub-
section (1) and sub-section 2(A) of Section 10 of

Industrial Disputes Act, 1947, have referred the following dispute for adjudication vide Order No. L-11012/95/98-CI dated 30-3-99 :—

“Whether the action of the Management of Singapore Airlines, Chennai in denying employment to Shri K. Sridhar with effect from 27-7-94 is justified or not? If not justified, to what relief the workman is entitled?”

2. This order of reference for the concerned industrial dispute was first made to Tamil Nadu Industrial Tribunal for adjudication and that Tribunal took this Industrial Dispute on file as I.D. No. 70/99 and issued notice to either side for their appearance and to file their respective pleadings. On receipt of notice, the Workman/I Party appeared through his counsel Sri Sivajothi and the Management appeared through their counsel M/s. King & Patridge. The Claim Statement as well as Counter Statement for the respective parties were filed before that Tribunal and when the matter was pending for enquiry, under orders of transfer by the Central Government this case was transferred from the file of Tamil Nadu Industrial Tribunal to the file of this Tribunal for adjudication. On receipt of records, (this industrial dispute) from the Tamil Nadu Industrial Tribunal, it was taken on file on 17-1-2001, as I.D. No. 116/2001. Notices were sent to counsel on either side, informing them about the transfer of this industrial dispute to this Tribunal, from the file of Tamil Nadu Industrial Tribunal, with a direction to appear in this Tribunal with their respective parties to prosecute this case for the hearing on 31-1-2001.

3. On the first date of hearing, the I Party/Workman and counsel on either side were present. On request of counsel on either side, the case was adjourned for enquiry to 15-2-2001, extending time for II Party to file their documents. From 15-2-2001, the case was adjourned to 5-3-2001, 21-3-2001, 9-4-2001 and finally to this date for enquiry, on request of either parties.

4. When the case was taken up for enquiry today, which was posted finally, the I party/Workman was not present. He was called absent. The counsel on record for I Party/Workman reported no instructions and made an endorsement to that effect in the Vakalat, he filed on behalf of the I Party. The counsel for the II Party is present. In view of the non-appearance and non-prosecution of this case by the I Party/Workman and his counsel reporting no instructions, this industrial dispute is dismissed for default and non-prosecution.

5. In the result, an award is passed dismissing the industrial dispute under reference, for default of I Party/Workman and his non-prosecution. No Cost.

(Dictated to Stenographer, transcribed & typed by him and corrected & pronounced by me in the open court on this day, the 1st May, 2001).

K. KARTHIKEYAN, Presiding Officer

नई दिल्ली, 23 मई, 2001

का. प्रा. 1359:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बड़जना कोलियरी आफ मै. बी. सी. 1709 GI/2001—12

एल. के प्रबंधन के संवद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं.-2) धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-5-2001 को प्राप्त हुआ था।

[सं. एल.-20012/18/96-आई प्रार (सी-1)]

एस. एस. गुप्ता, अव्वर सचिव

New Delhi, the 23rd May, 2001

S.O. 1359.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Badjna Colliery of M/s. BCCL and their workman, which was received by the Central Government on 22-5-2001.

[No. L-20012/18/96-IR(C-1)]
S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

Reference No. 34 of 1997

PARTIES :

Employers in relation to the management of Colliery of M/s. BCCL and their workman.

APPEARANCES :

On behalf of the Workman : None.

On behalf of the Employers : None.

STATE : Jharkhand. INDUSTRY : Coal.

Dated, Dhanbad, the 15th May, 2001

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/18/95-IR(C-1), dated, the 1st April, 1997.

SCHEDULE

“Whether the action of the management of Badjna Colliery in dismissing Sri Nimai Bouri from the service is justified? If not, to what relief is the workman entitled?”

2. In this reference none of the parties appeared before this Tribunal not took any steps although Regd. notices were issued to them. The reference is pending since 1997 and it is of no use to drag the same any more. Under such circumstances, the reference is disposed of on ‘No dispute’ Award basis

presuming non-existence of any industrial dispute between the parties presently.

B. BISWAS, Presiding Officer

नई दिल्ली, 23 मई, 2001

का. आ. 1360 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार की सी. सी. एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2) धनबाद के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-5-2001 को प्राप्त हुआ था।

[सं. एल.-20012/59/91-आई आर (सी-I)]

एम. एस. गुप्ता, अवर सचिव

New Delhi, the 23rd May, 2001

S.O. 1360.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of C.C.L. and their workman, which was received by the Central Government on 22-5-2001.

[No. L-20012/59/91-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT Dhanbad PRESENT :

Shri B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 147 of 1991

PARTIES :

Employers in relation to the management of the G.M.(H), Central Coalfields Ltd., Charhi and their workman.

APPEARANCES :

On behalf of the Workman : None.

On behalf of the Employers : Shri B. Joshi, Advocate.

STATE : Jharkhand INDUSTRY : Coal.

Dated, Dhanbad, the 30th April, 2001

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/59/91-IR (Coal-I), dated, the 23rd October, 1991 :

SCHEDULE

"Whether the action of the General Manager (H) Central Coalfields Limited, Charhi in dismissing from service Shri Murat Mahato w.e.f. 6-2-1987 is justified? If not, to what relief is the workman entitled?"

2. In this reference both the parties appeared and filed their respective W.S. documents, etc. Subsequently at the stage of oral evidence the workman side abstained from appearing before this Tribunal and taking any steps. The reference is pending since 1991 and it is of no use to drag the same any more. Under such circumstances, the reference is disposed of on 'No dispute' Award basis presuming non-existence of any industrial dispute between the parties presently.

B. BISWAS, Presiding Officer

नई दिल्ली, 23 मई, 2001

का. आ. 1361 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार की सी. सी. एल., धनबाद क्षेत्र के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2) धनबाद के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-5-2001 को प्राप्त हुआ था।

[सं. एल.-20012/79/95-आई आर (सी-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 23rd May, 2001

S.O. 1361.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL Bhowra Area and their workman, which was received by the Central Government on 22-5-2001.

[No. L-20012/79/95-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD PRESENT :

Shri B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

Reference No. 17 of 1996

PARTIES :

Employers in relation to the management of Bhowra Area of M/s. BCCL and their workman.

APPEARANCES :

On behalf of the Employers : Shri B. Joshi,
Advocate.

On behalf of the Workman : None.

STATE : Jharkhand. INDUSTRY : Coal.

Dated, Dhanbad, the 30th April, 2001.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/79/95-I.R. (Coal-I), dated, the 29th February, 1996.

SCHEDULE

"Whether the action of the management in dismissing Shri Nand Kishore Rai, Ex-Clerk Grade-II from the service of the company is justified? If not, to what relief is the concerned workman entitled to?"

2. In this reference both the parties appeared and filed their respective W.S. Subsequently when the case was fixed the learned Advocate for the management appeared but the workman side did not turn up. However, a petition was filed on the side of the workman praying for withdrawal of the case. I heard on the said petition and except the same. Accordingly, the reference is disposed of on the basis of 'No dispute' Award presuming that at present there is no industrial dispute existing between the parties.

B. BISWAS, Presiding Officer

नई दिल्ली, 23 मई, 2001

का. आ. 1362 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधन के संबंध में निम्नलिखित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2) घनवाह के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-5-2001 को प्राप्त हुआ था।

[सं. एल.-20012/258/90—आई आर (सी-I)]

एस. एस. गुप्ता, प्रवर सचिव

New Delhi, the 23rd May, 2001

S.O. 1362.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. II Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management BCCL and their workman, which was

received by the Central Government on 22-5-2001.

[No. L-20012/258/90-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT
DHANBAD

PRESENT :

Shri B. Biswas, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

Reference No. 1 of 1991

PARTIES :

Employers in relation to the management of Ramkanali Colliery of M/s. BCCL and their workman.

APPEARANCES :

On behalf of the workmen : None.

On behalf of the employers : None.

STATE : Jharkhand. INDUSTRY : Coal.

Dated, Dhanbad, the 30th April, 2001

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/258/90-I.R. (Coal-I), dated, the 14th January, 1991.

SCHEDULE

"Whether the management of East Katras Colliery of M/s. Bharat Coking Coal Ltd., is justified in dismissing Shri Deoki Parashad Trammer from service w.e.f. 27-9-89 is justified? If not, to what relief the said workman is entitled?"

2. In this reference both the parties appeared and filed their respective W.S. documents. Subsequently at the stage of oral evidence both the parties abstained from appearing before this Tribunal and taking any steps. The reference is pending since 1991 and it is of no use to drag the same from year to year. Under such circumstances, the reference is disposed of on 'No dispute'

Award basis on the presumption of non-existence of any industrial dispute between the parties presently.

B. BISWAS, Presiding Officer

नई दिल्ली, 23 मई, 2001

का. आ. 1363 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2) धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-5-2001 को प्राप्त हुआ था।

[सं. एल.—20012/286/90-आई आर (सी-1)]

एस. एस. गुप्ता, अवसर सचिव

New Delhi, the 23rd May, 2001

S.O. 1363.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of B.C.C.L. and their workman, which was received by the Central Government on 22-5-2001.

[No. L-20012/286/90-IR(C-I)]
S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT
DHANBAD

PRESENT :

Shri B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947,

Reference No. 19 of 1991

PARTIES :

Employers in relation to the management of Kooridih Colliery of M/s. BCCL and their Workman.

APPEARANCES :

On behalf of the employers : Shri B. Joshi, Advocate.

On behalf of the workmen : None.

STATE : Jharkhand. INDUSTRY : Coal.

Dated, Dhanbad, the 14th May, 2001

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/286/90-I.R. (Coal-I), dt. the 18th December, 1990 :

SCHEDULE

"Whether the action of the management of Kooridih Colliery in Govindpur Area No. III of M/s. BCCL in dismissing the workman Shri Ramu Barara w.e.f. 1-11-89 is justified? If not, to what relief is he entitled?"

2. In this reference both the parties appeared and filed their respective W. S. Subsequently the workman side abstained from taking any steps. The reference is pending since 1991 and it is of no use to drag the same any more. Under such circumstances, there is no other way out but to presume that the workman is not interested to proceed further with the dispute. Accordingly a 'No Dispute' Award is rendered and the reference is disposed of on the basis of 'No Dispute' Award presuming non-existence of any industrial dispute between the parties presently.

B. BISWAS, Presiding Officer

नई दिल्ली, 23 मई, 2001

का. आ. 1364 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एच. पी. सी. एल., बंगलूर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-5-2001 को प्राप्त हुआ था।

[सं. एल.-20040/15/95-आई आर (सी-I)]

एस. एस. गुप्ता, अवसर सचिव

New Delhi, the 23rd May, 2001

S.O. 1364.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of HPCL, Bangalore and their workman, which was received by the Central Government on 22-5-2001.

[No. L-20040/15/95-IR(C-I)]
S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, BANGALORE

Dated : 16th May, 2001

PRESENT :

Hon'ble Shri V. N. Kulkarni, B.Com., LLB., Presiding Officer.

C.R. No. 133/97

I PARTY

K. Srinivasa,
S/o Krishna,
Major,
R/o No. 1815/2. 36/2,
Griya Bovi Palaya,

Nazarbad Mohalla,
Mysore-11.
(Advocate—Ganesh Bhat, Y. H.)

II PARTY

General Manager,
South Zone,
Thalamuthu, Natarajan
Building, 3rd Floor,
Gandhi Irwin Road,
P.B. No. 3045, Egmore,
Madras-600008.
(Advocate—C. M. Desai)

AWARD

1. The Central Government by exercising the powers conferred by Clause (d) of sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. 20040/15/95-IR (Coal-I) dated 23rd April 1996 for adjudication on the following schedule :

SCHEDULE

“Whether the action of the management of HPCL, Bangalore to impose the penalty of stoppage of two increments and transfer to LPG plant at Bangalore is justified? If not, to what relief is the concerned workman entitled?”

2. The first party was working with the second party from 1-4-87. The charge sheet was issued to him and enquiry was held. On the basis of enquiry report the management imposed the penalty of stoppage of 2 increments and transferred to LPG plant at Bangalore so dispute was raised.

3. The first party filed claim statement. The case of the first party in brief is as under :

4. The first party was working as General Workman since 1987. He was serving sincerely and diligently without any blemish. He was working at the LPG Plant at Mysore. There was some exchange of words between him and one Mr. Rathnakara. Charge sheet was issued against him alleging misconduct that he was disorderly behaving during working hours at the establishment. He furnished reply but the same was not accepted. Enquiry was held and punishment is imposed. So far as enquiry is concerned it is said that the same is not correct and valid. Before proceeding further I may mention here that this tribunal by order dated 14-7-99 held that the enquiry is valid and proper. It is the further grievance of the applicant that the punishment is not correct and he has prayed to pass award in his favour.

5. Respondent i.e. 2nd Party filed Counter Statement. The case of the Respondent in brief is as follows :

6. The reference is not maintainable. Details of the working of the respondent is given in paras 3 and 4 of the Counter Statement. So far as enquiry is concerned, it is said that the same is correct. The punishment imposed on first party is only stoppage of two increments and the dispute is not raised by the union.

The dispute raised by the first party in his individual capacity challenging the stoppage of increment that too belatedly is not at all maintainable. The workman approached the Hon'ble High Court of Karnataka in W.P. No. 3396/97 but that was dismissed. All the allegations made by the first party are not correct. Misconduct is proved and the action of the management is correct. The Second Party has prayed to reject the reference.

7. It is seen from the records that for the management one witness is examined. His evidence is that the first party was working in Mysore LPG Bottling Plant. While on duty he has assaulted a co-worker by name Shri M. S. Rathnakar and caused injuries. This witness is not cross examined by the first party. Against this first party has not given evidence. I have considered all the records carefully. In the instant case domestic enquiry is held as valid and proper. The misconduct is that the first party assaulted co-worker and injured him.

8. In my humble opinion the punishment is proportionate and there is no merit in this reference. Accordingly I proceed to pass the following order :

ORDER

This reference is rejected.

(Dictated to PA transcribed by her corrected and signed by me on 16th May, 2001.)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2001

का.प्र. 1365.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विजया बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अस न्यायलय कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-4-2001 को प्राप्त हुआ था ।

[सं. एल-12012/123/98-आई आर (बी-II)]

सी, गंगाधरन, अवर सचिव

New Delhi, the 27th April, 2001

S.O. 1365.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Kanpur, as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Vijaya Bank and their workman, which was received by the Central Government on 26-4-2001.

[No. L-12012/123/98-IR(B-II)]

C. GANGADHARAN. Under Secy.

ANNEXURE

BEFORE SRI R. P. PANDEY PRESIDING
OFFICER CENTRAL GOVERNMENT INDUS-
TRIAL TRIBUNAL CUM LABOUR COURT
117/9 SARVODAYA NAGAR, KANPUR

Industrial Dispute No. 15 of 1999

In the matter of dispute between
Sri Pramod Kumar Gupta
S/o Sri R. C. Gupta, Kothi No. 80,
Gulab Nagar, Hathras Road, Agra.

And

Vijaya Bank,
The Divisional Manager VB,
Divisional Office,
Lucknow.
AWARD

1. Central Government, Ministry of Labour, vide its notification no. L-12012/123/98/IR(B-II) dated 25-1-99 has referred the following dispute for adjudication to this tribunal—

Whether the action of the management of Vijaya Bank in terminating the services of Sh. Pramod Kumar Gupta clerk Jeoni Mandi Agra Branch from 8-10-92 vide order dated 28-11-92 was legal and justified? If not, to what relief the workman is entitled to?

2. The workman has filed statement of claim with allegations that he was appointed as clerk on 11-8-80 in Vijaya Bank and was confirmed on that post later on. He was lastly posted at Branch office Jeoni Mandi Agra from where his services were terminated vide order dated 28-9-92 w.e.f. 8-10-92 illegally. His services were governed by provisions of Bipartite Settlements made from time to time between the management and Unions of the Employees of the bank. He could not join duties in the bank w.e.f. 21-6-92 due to illness of his wife and some other unavoidable circumstances concerned with the family affairs hence the bank vide its notice dated 8-9-92 asked the workman to report for duty within thirty days from the publication of the notice. The workman received that notice on 12-9-92 and reported for duty on 14-9-92 within thirty days from the date of the receipt of the notice. The branch manager of the Jeoni Mandi Branch of the bank did not permit him to resume his duties treating the reasons given by the concerned workman for his absence from duty in his joining report as unsatisfactory. The General Manager of the bank vide order dated 28-11-92 informed the workman that his name has been struck off from the muster roll of the bank w.e.f. 8-10-92 treating him to have voluntarily retired from the service of the bank in terms of clause 17 of the Bipartite Settlement dated 10-4-89.

3. It has been alleged by the workman that clause 17 of the bipartite settlement did not apply in his case as he was not absent for more than 90 days before the date of notice dated 8-9-92, hence the action taken by the bank under clause 17 of bipartite settlement is illegal and without any jurisdiction. If has been alleged that the alleged order of termination

of service of the workman was illegal as it was passed in violation of the principles of natural justice without giving an opportunity of hearing on the point of unauthorised absence from duty. It has also been alleged that termination of service of the concerned workman amounts to retrenchment as defined under the Industrial Disputes Act, and is illegal being passed in violation of section 25F of the Act, as no retrenchment compensation was paid to him at the time of termination from service. It has also been alleged that termination of his service amounted to punishment of removal which is illegal being passed without holding domestic enquiry against him on the alleged charge of absence from duty. He has prayed that the impugned order of termination may be declared illegal and void and be set aside and the management may be directed to reinstate him in service with full back wages.

4. The management has filed written statement with the contention that the service condition of the workmen of the bank are governed by Shastri Award as modified by Desai Award and subsequently by bipartite Settlements entered into Indian Banks Association representing the management of Banks and All India Association of Workmen Employees. The awards and settlements are binding on the employees of the bank as well as management of the bank. As per provisions of the bipartite Settlements leave of any kind cannot be availed as a matter of right and an employee has to obtain prior sanction of leave before availing the leave. It has been admitted that Pramod Kumar Gupta was appointed as clerk on 11-8-80 and was confirmed as clerk w.e.f. 11-2-81. Lastly he was posted at Jeoni Mandi Branch of the Bank at Agra. While he was posted at Jeoni Mandi Agra Branch, he was very irregular in attending office. He remained absent from duty unauthorisedly from 12-11-91 and he had not reported for duty till 13-5-92. Since the concerned workman continued to remain absent from duty unauthorisedly from duty for more than 90 days, a notice dated 13-5-92 was sent to his last recorded address by registered post by Divisional Manager of the bank advising Sri Pramod Kumar Gupta to report for duty at the branch office within thirty days from the date of issue of said notice in terms of clause 17 of the V Bipartite Settlement dated 10-4-89. It was made clear that in case the workman fails to report for duty within a period of thirty days of the date of notice it would be deemed that he has voluntarily retired from the service of the bank and his name would be struck off from the muster roll of the bank. In respect of that notice Shri Pramod Kumar Gupta reported for duty on 11-6-92 within the stipulated time mentioned in the notice. Though Sri Gupta reported for duty on 11-6-92 he again remained absent unauthorisedly from duty w.e.f. 21-6-92 onwards. Sri Pramod Kumar Gupta again absented himself from duty within a period of thirty days of resumption of duty after earlier long spell of unauthorised absence without submitting any leave application, a second notice dated 8-9-92 was sent to him on his last recorded address by registered post by Divisional Manager, Divisional Office, Lucknow, calling upon Sri Pramod Kumar Gupta to report on duty at Jeoni Mandi, Agra Branch within thirty days of issue of notice. That notice was based on the provisions of clause 17 of V Bipartite Settlement dated 10-4-89. It was made clear in the said notice dated 8-9-92 that in case workman

fails to report for duty within a period of thirty days time, it would be deemed that the workman has voluntarily retired from the service of the bank and his name shall be struck off from the muster roll of the bank. The said notice was received by Sri Pramod Kumar Gupta but he failed to report on duty at Jeoni Mandi, Agra Branch at Agra within the stipulated period of thirty days. Under the circumstances the prolonged absence of Sri Pramod Kumar Gupta raised a reasonable inference that is no longer interested in the employment of the bank and intended to abandon and relinquish his job. Accordingly the General Manager of the bank passed an order dated 28-11-92 deeming that Sri Pramod Kumar Gupta voluntarily retired from the service of the bank and, therefore, his name was struck off from the muster roll of the bank w.e.f. 8-10-92. Actually there was no necessity to communicate the order of the competent authority because the voluntarily cessation of employment automatically took effect w.e.f. 8-10-92 when thirty days period expired. Since the voluntarily cessation of employment of the concerned workman had taken effect from 8-10-92 Sri Pramod Kumar Gupta's offering himself for employment on 12-10-92 was of no consequence and the manager had every right not to permit him to join duty after he ceased to be employee of the bank. Thus the order passed by the competent authority is legal and justified and there is no illegality in it. As the services of Sri Pramod Kumar Gupta came to an end on 8-10-92 in view of the provisions of clause 17 of the Bipartite Settlement relating to voluntary cessation of employment due to unauthorised absence and non compliance with the notice, there was no acquisition of issuing him charge sheet or giving him an opportunity of hearing in the case. Action taken by the management in accordance with the provisions of clause 17 of Bipartite Settlement is according to the terms of service and the action taken by the management is not violative of the principles of natural justice. It has been alleged that voluntary cessation of employment of the concerned workman does not amount to retrenchment as defined under the I.D. Act, Clause 17 of Bipartite Settlement is a valid piece of settlement and is not nullified by any provision of Industrial Disputes Act. It has been alleged that the averments made by Sri Pramod Kumar Gupta that he could not join duty w.e.f. 21-6-92 due to illness of his wife is false and baseless. It has been alleged that when an order dated 28-11-92 was communicated to him, the concerned workman did not file any appeal or representation to higher authorities till he raised the dispute before ALCO in the year 1997 which was sufficient to indicate that he was not interested in the employment of the bank and there was no industrial dispute left between the parties when a dispute was raised before ALCO. It has been alleged that the concerned workman is not entitled to get any relief in pursuance of the reference made to this tribunal.

5. It has been alleged by the management that the concerned workman remained absent from duty from 12-11-91 up to 13-5-92 without giving any application for leave and without obtaining leave from the bank and he reported for duty on 11-6-92 in compliance of notice dated 13-5-92 and he again started remaining absent from duty from 21-6-92 without obtaining leave from the bank and without submitting

any leave application for leave and when the second notice dated 8-9-92 was served on him he did not report for duty within stipulated period of thirty days knowing fully well that if he fails to report for duty within thirty days he shall be deemed to have retired from the services of the bank. Even after communication of the order dated 28-11-92 he did not take any action for getting employment in the bank till 1996 which was sufficient to indicate that he was not interested in the job of the bank and remained absent with a view to abandon the service of the bank. In the circumstances the action of the management treating the concerned workman to have abandoned the service of the bank is fully justified and the concerned workman is not entitled to get any relief in pursuance of this reference.

6. The concerned workman has filed rejoinder in which he has reiterated the facts alleged in the claim statement.

7. The workman has examined himself as w.w.1 and filed 11 documents ext. w-1 to w-11 in support of his case. The management examined Sri Vivekanand Hedge as M.W. 1 and filed documents ext. M-1 to M-12 in support of its case.

8. I have heard the authorised representative for the management and the concerned workman in person and have gone through the record of the case. The workman has argued before me that the action by the management of the bank under clause 17 of Bipartite Settlement dated 10-4-89 is illegal because he was not absent from duty for more than 90 days when the action was taken against him terminating his services. After going through the record of the case, I do not find any force in this contention. The concerned workman has admitted all the documents filed by the management. The record shows that the concerned workman was absent from duty w.e.f. 12-11-91 without submitting any leave application for leave and without taking any leave from the competent authority of the bank. Hence the management vide its letter dated 14-11-91 Ext. M-14 informed him that he was unauthorisedly absent and he should report for duty forthwith. It appears that after getting that letter the concerned workman moved an application dated 15-11-91 which is paper No. 1 of the list of workman dated 1-12-2000 in which he informed the bank that due to severe infection he was unfit to join duty from 12-11-91 and he has been advised by the Doctor rest for three weeks. He did not make any prayer in that application for granting any leave from 12-11-91 onwards. There is nothing on records to show that even after expiry of three weeks from 12-11-91 Sri Pramod Kumar Gupta moved any application before the authorities of the bank for granting him leave before 10-6-92 although he had already received a notice dated 13-5-92 to the effect that he was unauthorisedly absent from duty from 12-11-91 and if does not report for duty within thirty days from the date of notice he will be deemed to have retired from the service of the bank in accordance with the service condition. The record shows that when he reported for duty on 11-6-92 he moved an application for granting him leave for the period of his absence from 12-11-91 up to 10-6-92 i.e. 212 days on the ground of domestic reasons. It is notable that in the previous application dated 14-11-91 he had written that he was unable to join duty due to his

own illness but in his application dated 11-6-92 he applied for leave for the period from 12-11-91 to 10-6-92 due to domestic reason. However the bank permitted him to join his duties on 11-6-92 but he again became absent from duty w.e.f. 21-6-92 without submitting any application for leave and without taking any leave from the bank and without taking leave for the period of absence which was for more than 200 days before the date of his notice. Thus his absence from 12-11-91 upto 10-6-92 and from 21-6-92 upto 8-9-92 was unauthorised because he had neither moved any proper application for grant of leave nor he had obtained any leave for the aforesaid period. It appears that the concerned workman has tried to plead before this tribunal that he could not attend the duties due to serious illness of his wife and his domestic affairs but he has not produced any evidence much less documentary evidence to prove that his wife was seriously ill at any point of time during the aforesaid period. He did not produce any medical certificate either before the bank authorities or even before this tribunal to show that his wife was ill during that period. He has not been able to show as to what were those family affairs on account of which he was prevented from joining his duties at Jeoni Mandi branch of the bank. It appears that in the beginning he moved applications informing bank that he was ill but he did not disclose as to from what type of disease he was suffering. Later on in his application dated 11-6-92 he did not write that he could not resume duties w.e.f. 12-11-91 either due to his own illness or due to illness of his wife. This fact is clear from the letter of the bank dated 11-6-92 handed over to the concerned workman which is ext. M-6 on the record. This shows that Sri Pramod Kumar Gupta has given a false explanation in his pleading that he could not join duties during the period of his absence from duty due to illness of his wife or due to his own illness or due to domestic affairs. Even in his statement on oath he could not dare to state on oath that his wife was ill during the aforesaid period and he could not join duties due to the illness of his wife. Thus there is no evidence on record to show that he could not join duties due to illness of his wife. In these circumstances the management bank was fully justified in presuming that the concerned workman was not interested in joining his duties even after service of the second notice dated 8-9-92 on him and that is why he did not report for duty within thirty days from the date of notice. It is notable that MW1 has clearly stated that the second notice was pasted on the notice board of Jeoni Mandi Branch Agra on 9-9-92 and the concerned workman knew about that notice from that date. The concerned workman has also admitted that he used to visit the bank usually. In these circumstances, I am inclined to believe the case of the management that the concerned workman was joyfully engaged somewhere else and that is why he was not interested in joining duties and the action of the management taken under clause 17 of V Bipartite Settlement dated 10-4-89 is fully justified treating him to have retired from the service of the bank when he did not report for duty within the stipulated period of thirty days given in the notice dated 8-9-92. I, therefore, hold that the action of the management taken against Sri Pramod Kumar Gupta is in accordance with clause 17 of V Bipartite Settlement and there is no illegality in the action taken by the bank.

10. The authorised representative for the bank has drawn my attention towards judgement passed by Hon'ble Supreme Court of India in *Syndicate Bank versus General Secretary Syndicate Bank Staff Association* reported in 2000(1) LLJ, 630, in which action taken under clause 16 of IV Bipartite Settlement was held to be valid when the concerned workman had not reported for duty within thirty days from the date of notice. I have gone through that judgement. The case of the management of Vijaya Bank appears to be on stronger footing than the case cited above in which the workman had refused to receive the notice and yet the Hon'ble Supreme Court of India held that bank was justified in treating the concerned workman to have retired from the service after expiry of the period of thirty days given in the notice. In that case at page 1640 in paragraph 17 the Hon'ble Supreme Court has held as under :—

Bank has followed the requirements of clause 16 of the Bipartite Settlement. It rightly held that Dayananda has voluntarily retired from the service of the bank. Under these circumstances it was not necessary for the bank to hold any enquiry before passing the order. An inquiry would have been necessary if Dayananda had submitted his explanation which was not acceptable to the bank or contended that he did report for duty but was not allowed to join by the bank. Nothing of the like has happened here. Assuming for a moment that enquiry was necessitate evidence led before the tribunal clearly showed that notice was given to Dayananda and it is he who defaulted and offered no explanation of his absence from duty and did not report for duty within 30 days of the notice as required in clause 16 of the Bipartite Settlement.

The law laid down in the case cited above fully applies to the facts of the present case and the action of the management of the bank appears to be fully justified in the circumstances of the case which has been taken in accordance with clause 17 of V Bipartite Settlement dated 10-4-89. It is notable that clause 16 of IV Bipartite Settlement is similar to clause 17 of V Bipartite Settlement dated 10-4-89.

11. The workman has argued that termination of his service amounted to retrenchment which have been passed in violation of section 25F of Industrial Disputes Act, hence it is illegal. On the other hand the authorised representative for the bank has argued that the alleged cessation of the employment of the workman in terms of clause 17 of Bipartite Settlement does not amount to retrenchment. He has placed reliance on the judgement passed by Andhra Pradesh High Court *M.P. Venkateshwaru versus B.M. State Bank of India Vijaiwada* LLJ page 533. In this judgement it has been held by the Hon'ble High Court that paragraph 16 of the Bipartite Settlement is valid piece of settlement. The law laid down in this case fully applies to the facts of the present case also. In the aforesaid case in paragraph 14 at page 537 the Hon'ble High Court of Andhra Pradesh has held as under :—

"It will be noticed that para XVI uses the words 'will be deemed to have voluntarily retired from the service. If the employer and the employees unions have agreed to a settlement treating a particular set of facts to result in the employee being deemed to have voluntarily retired the case would clearly fall within sub-clause (a) of Section 2(oo) which provides that a voluntary retirement of the workman shall not be treated as retrenchment. In view of the Bipartite Settlement both sides had agreed that a certain state of facts if proved to exist amounted to voluntary retirement and if so, it will not amount to retrenchment under section 2(oo) and will not come under section 25F."

The law laid down in paragraph 14 of the aforesaid case make it clear that action taken under paragraph 16 of IV Bipartite Settlement does not amount to retrenchment. The law laid down in the case cited above fully applies to the facts of the present case in which action has been taken in accordance with paragraph 17 of V Bipartite Settlement, whose provisions are similar to the provisions of clause 16 of IV Bipartite Settlement mentioned above. I, therefore, hold that the alleged cessation of employment of the concerned workman cannot be treated as retrenchment as defined under the Industrial Disputes Act, 1947.

11. The workman has argued that termination of service on the ground of unauthorised absence from duty amounts to punishment of removal as it has been passed without giving him an opportunity of hearing hence it is illegal and is liable to be quashed. After going through the record and the law laid down by the Hon'ble Supreme Court in the case of Syndicate Bank (supra) I do not find any force in this contention. In that case the Hon'ble Supreme Court had held that there is sufficient compliance of the principles of natural justice when notice is given to the concerned workman for submitting his explanation for absence from duty and for reporting for duty within the time given in the notice and if the concerned workman does not give satisfactory explanation for his absence from duty and does not report for duty within the time given in the notice consequence as given in Bipartite Settlement shall follow and he cannot blame the management for taking action against him in accordance with condition of his service as contained in Bipartite Settlement.

12. The record shows that the concerned workman remained absent from duty without taking leave and without submitting any application for leave from 12-11-91 to 10-6-92 and from 21-6-92 till the cessation of his employment according to the provisions of law. Even after cessation of his employment in terms of notice dated 8-9-92 he did not approach higher authorities of the bank for taking him in the service of the bank. The record shows that he for the first time moved an application to the General Manager of the Bank on 1-4-96 without approaching the higher authorities against the order treating him to have retired from the service which was passed by the General Manager of the Bank on 28-11-98. This shows that the concerned workman was gainfully employed some where and was earning money from 1709 GI/2001—13

other sources and that is why he kept mum for four years without approaching higher authorities for getting job again in the bank. Shri Hegde M.W.I clearly stated on oath that the brother of the concerned workman was carrying a business of share broker in a shop in front of Jeoni Mandi Branch of the bank at Agra and the concerned workman was also doing the same business and profession with his brother and that is why he was not interested in joining the services of the bank. His evidence on this point goes uncontroverted. The concerned workman did not suggest to him that he was not carrying on profession of share broker and the shop of his brother was not in front of the branch of the bank in which he was carrying on business of share broker. The evidence of M.W.I on this point appears to be correct and it supports the contention of the management that the concerned workman was gainfully employed in other profession and business and that is why he had no intention to join duties in the bank and remained absent for several months without moving any application for leave and kept mum for four years even after cessation of his employment. In these circumstances the case of the management appears to be correct that the concerned workman was gainfully employed in other trade or business and had no intention to join duties of the bank, and the decision of the bank that he had relinquished and abandoned the service of the bank appears to be fully justified.

13. In view of above considerations, I do not find any illegality in the action taken by the management against the concerned workman. I, therefore, hold that the action of the management of Vijaya Bank in treating the concerned workman to have voluntarily retired from the service of the bank w.c.f. 8-10-92 is wholly justified and lawful. I, therefore, do not find any illegality in the action of the management and the concerned workman is not entitled to get any relief in pursuance of this reference.

14. The reference is answered accordingly.

R. P. PANDEY, Presiding Officer

नई दिल्ली, 6 अक्टूबर, 2000

का.आ. 1366.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 04-10-2000 को प्राप्त हुआ था।

[सं. एल-22012/151/96- आई आर (सी-II)]
एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 6th October, 2000

S.O. 1366.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Jaipur, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of F.C.I. and their workman,

which was received by the Central Government on 4-10-2000.

[No. L-22012/151/96-IR (C-II)]

N. P. KESAVAN, Desk Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिग्रहण एवं श्रम न्यायालय,
जयपुर

प्रकरण संख्या :- सी.जी.आई.टी./बी-1/97

आदेश संख्या :- एन-22012/151/96-आई.आर. दिनांक
14-3-97

दानसिंह पुत्र श्री कानाराम जाति जाट निवासी पासुसर झाल
नयावास, चुरू ।

—प्रार्थी

बनाम

1. जिला प्रबन्धक, भारतीय खाद्य निगम, बीकानेर ।
प्रबन्धक, भारतीय खाद्य निगम, चुरू ।

—अप्रार्थीगण

उपस्थित :—

प्रार्थी की ओर से

श्री असगरखान

अप्रार्थी की ओर से

श्री पी.सी.शाह

पंचाट दिनांक 18-9-000

पंचाट

केन्द्रीय सरकार के द्वारा उक्त आदेश के जर्गन निम्न
विवाद, औद्योगिक विवाद अधिनियम 1947 (जिसे बाद में
अधिनियम 1947 कहा गया है।) की धारा 10 की उप-
धारा (1) के खण्ड-घ के प्रावधानों के अन्तर्गत न्याय-
निर्णय हेतु इस अधिग्रहण को निर्देशित किया गया :—

“Whether the action of the management of
. FCI, Churu, Distt. Jhunjhunu, in terminat-
ing the services of Sh. Dan Singh S/o Sh.
Kana Ram, Casual Labour/watchman w.e.f.
21-5-80 is legal and justified? If not, to
what relief is the workman entitled?”

प्रार्थी की ओर से स्टेटमेंट ऑफ क्लेम प्रस्तुत किया गया,
जिसमें उल्लेख किया गया कि वह भारतीय खाद्य निगम,
चुरू (जिसे बाद में निगम कहा गया है।) के नियोजन से
अप्रार्थी नियोजकगण के अधीन दिनांक 15-9-79 को दैनिक
बेतनभोगी चौकीदार के रूप में नियुक्त हुआ तथा नियुक्ति तिथि
से दिनांक 0-5-80 तक बिना किसी व्यवधान के लगातार
कार्यरत रहा। अप्रार्थीगण द्वारा दिनांक 20-5-80 को दोपहर
बाद से मौखिक आदेश के द्वारा उसकी सेवा समाप्त कर
दी गई। सेवा समाप्ति से पूर्व उसने अप्रार्थी के नियोजन
में 240 दिन से अधिक कार्य किया। सेवा समाप्ति से
पूर्व न तो एक माह का नोटिस दिया गया न नोटिस वेतन
व न छटनी का मुआवजा। उसकी सेवा समाप्ति के समय

कोई बरिष्ठता सूची भी नहीं बनाई गई व न नोटिस
बोर्ड पर चम्पा की गई व “प्रथम आये आखिर जाये” सिद्धान्त
की पालना नहीं की गई। उसकी सेवा समाप्ति के पश्चात्
अप्रार्थीगण ने नई नियुक्तियां भी की, जिनमें पन्नाराम
व अनेक श्रमिकों को नियुक्त किया गया, परन्तु उसे पुनः
नियोजन का अवसर नहीं दिया गया। इस प्रकार अप्रार्थीगण
के द्वारा अधिनियम 1947 की धारा 25-एफ, जी, एच एवं
औद्योगिक विवाद (केन्द्रीय) नियम 1957 (जिसे बाद में
नियम 1957 कहा जाएगा।) के नियम 77, 78 का
उल्लंघन किया गया। प्रार्थी द्वारा पुनः नियोजन हेतु अप्रार्थी-
गण से निवेदन करने पर प्रार्थी को आप्रवस्त किया
गया कि उसे पुनः नियोजन में ले लिया जाएगा तथा इसी
आशा में प्रार्थी को चक्कर पर चक्कर कटवाने रहे व अन्ततः
मौखिक इन्कारी पर उसे विधि के प्रावधानों का ज्ञान न
होने पर सेवा पृथक् का विवाद उसने श्रम विभाग, चुरू के
समक्ष उठाया जिनके द्वारा पत्र दिनांक 5-7-97 में विवाद
सहायक श्रम आयुक्त (केन्द्रीय) जयपुर के समक्ष उठाने की
राय देने पर उसने सहायक श्रम आयुक्त (केन्द्रीय) जयपुर
के समक्ष विवाद उठाया। वह सेवा पृथक् की तिथि से
बेरोजगार बैठा है। प्रार्थना की गई कि उसकी सेवासमाप्ति
को अग्रैध घोषित किया जाये व उसकी सेवा को निरन्तर मानते
हुये पुनः सेवा में बहाल किया जाये व पिछला वेतन दिलाया
जाये।

अप्रार्थीगण की ओर से स्टेटमेंट ऑफ क्लेम का जवाब
प्रस्तुत किया गया, जिसमें उल्लेख किया गया कि प्रार्थी की
नियुक्ति बतौर चौकीदार नहीं की गई व न उसकी दिनांक
15-9-79 को कोई नियुक्ति की गई। कार्य की उपलब्धता
के आधार पर प्रार्थी श्रमिक दिनांक 15-9-79 को बतौर
दैनिक बेतनभोगी श्रमिक के रूप में रखा गया था। उसने
वर्ष, 1979 में केवल 182 दिन कार्य किया। प्रार्थी का
कथन कि उसने सेवा पृथक् की तिथि तक 240 दिन से
अधिक कार्य किया, गलत है। प्रार्थी दिनांक 20-5-80 को
निगम कार्यालय में उपस्थित ही नहीं हुआ। वह स्वयं ही
अनुपस्थित रहकर कहीं अन्यत्र चला गया। चूँकि अप्रार्थी-
गण द्वारा प्रार्थी की कोई छटनी नहीं की गई, अतः अधि-
नियम 1947 की धारा 25-एफ, जी, एच व नियम 1957
के नियम 77, 78 लागू नहीं होंगे। पन्नाराम के नाम
से कोई श्रमिक दैनिक बेतनभोगी कर्मचारी के रूप में नियुक्त
नहीं किया गया। विवाद अत्यन्त देरी से उठाया गया है
इस कारण भी निरस्त किए जाने योग्य है। प्रार्थी का यह
कथन कि वह सेवा पृथक् की तिथि से बेरोजगार है, को
गलत बताया।

पक्षकारों के अभिकथनों के आधार पर निम्नांकित
विवाद बिन्दु बनाये गये :—

(1) अर्थात् प्रार्थी ने सेवा पृथक् की तिथि तक एक कलै-
ण्डर वर्ष में अप्रार्थीगण के नियोजन में 240 दिन
से अधिक कार्य किया है ?

- (2) आया अप्रार्थीगण के द्वारा औद्योगिक विवाद अधिनियम, 1947 की धारा 25 (एफ), 25 (जी), 25 (एच) व नियम 77 एवं 78 का उल्लंघन किया गया है ?
- (3) आया प्रार्थी सेवा पथक की तिथि से बेराजगार है ?
- (4) प्रार्थी किम सहायता को प्राप्त करने का अधिकारी है ?

प्रार्थी की ओर से क्लेम के समर्थन में स्वयं का शपथपत्र प्रस्तुत किया गया, जिस पर प्रतिपरीक्षा करने का अवसर अप्रार्थी के अधिवक्ता को दिया गया। प्रलेखीय साक्ष्य में प्रतिलिपि पत्र श्रम कल्याण अधिकारी, चक्र दिनांक 5-7-95 प्रदर्श डब्ल्यू—1, प्रतिलिपि अमफल वार्ता प्रतिवेदन दिनांक 29-3-96 प्रदर्श डब्ल्यू—2, प्रतिलिपि प्रमाणपत्र प्रदर्श डब्ल्यू—3, प्रतिलिपि आवेदन प्रदर्श डब्ल्यू—4, प्रतिलिपि रसीद प्रदर्श डब्ल्यू—5 व प्राप्ति स्वीकृति प्रदर्श डब्ल्यू—6 व 7 प्रस्तुत की। अप्रार्थीगण की ओर से धनराज आसोपा, जिला प्रबन्धक (प्रभारी) का शपथपत्र प्रस्तुत किया गया, जिस पर प्रतिपरीक्षा करने का अवसर प्रार्थी के प्रतिनिधि को दिया गया। प्रलेखीय साक्ष्य में भुगतान रजिस्टर की प्रतिलिपि प्रदर्श एम—1 से लेकर एम—6 प्रस्तुत की।

बहस सुनी गई एवं पलावली का अवलोकन किया गया।

बनाये गये विवाद बिन्दुओं का विनिश्चय निम्न प्रकार किया जाता है —

बिन्दु संख्या 1— प्रार्थी का कथन है कि वह अप्रार्थीगण के अधीन दिनांक 15-9-79 को दैनिक बेतनभोगी चौकीदार के पद पर नियुक्त हुआ व उसने दिनांक 31-5-1980 तक लगातार कार्य किया। प्रतिपरीक्षा में उसने स्पष्ट किया है कि शपथपत्र में दिनांक 31-5-80 गलती से लिख दी है। उसे दिनांक 21-5-80 को दोपहर बाद से नौकरी से हटाया गया था। उसका कथन है कि कार्य अवधि के बारे में मन्सेना, डिपो अधिकारी ने प्रमाणपत्र दिया था, जिसमें उल्लेख किया गया है कि प्रार्थी ने दिनांक 15-9-79 से 20-5-80 तक अवकाश के तथा अन्य दिनों को छोड़कर निगम के कार्यालय, चुग में आकस्मिक श्रमिक/वाचमैन के रूप में कार्य किया है। इस प्रमाणपत्र पर आगार प्रभारी के हस्ताक्षर दिनांक 21/5 अंकित हैं। प्रार्थी का यह भी कथन है कि उसने सन् 1979 में सितम्बर, अक्टूबर व नवम्बर माह में क्रमशः 15 दिन, 26 दिन, 25 दिन व सन् 1980 में दिसम्बर, जनवरी, फरवरी, मार्च, अप्रैल, मई में क्रमशः 26, 25, 24, 26, 25 एवं 17 दिन कार्य किया। उक्त कार्य दिवसों में रविवार व अन्य अवकाशों के दिन सम्मिलित नहीं हैं। चुमरी ओर धनराज आसोपा का कथन है कि प्रार्थी ने

सन् 1979 के सितम्बर, अक्टूबर, नवम्बर, माह में क्रमशः 12, 17, 19, व सन् 1980 में दिसम्बर, जनवरी, फरवरी, मार्च, अप्रैल, मई माह में क्रमशः 22, 26, 21, 23, 24, 25 दिन दैनिक बेतनभोगी कर्मचारी के रूप में कार्य किया। उसका कथन है कि प्रार्थी को चौकीदार के पद पर नियुक्ति नहीं की गई। उसका कथन है कि 189 दिन प्रार्थी ने कार्य किया। प्रमाणपत्र प्रदर्श डब्ल्यू—3 के बारे में उसका कथन है कि प्रार्थी ने कहीं अव्यक्त निवृत्ति हेतु प्रमाणपत्र प्राप्त किया था। माह दिसम्बर, 1979 से माह मई, 1980 तक प्रार्थी की भुगतान प्रविष्टियाँ प्रदर्श एम—1 से प्रदर्श एम—6 प्रस्तुत की गई, जिनके अनुसार प्रार्थी ने दिसम्बर, 1979 में 22 एवं सन् 1980 में जनवरी, फरवरी, मार्च, अप्रैल, मई में क्रमशः 26, 21, 23, 24, 25 दिन बतौर आकस्मिक श्रमिक के कार्य करने के बावत प्रार्थी को 7/— रुपये प्रतिदिन की दर से भुगतान किये जाने का उल्लेख है। उसका कथन है कि सितम्बर, 79 से नवम्बर, 79 का न तो भुगतान रजिस्टर उपलब्ध हुआ है व न वर्कशीट जिनके अनुसार उपस्थिति की गणना की जाती है व भुगतान रजिस्टर के जरिये मजदूरी का भुगतान किया जाता है। उसका यह भी कथन है कि वर्कशीट 5 वर्ष बाद निरपन कर दी जाती है। भुगतान प्रविष्टियों के आधार पर यह तो नहीं कहा जा सकता कि प्रार्थी ने किस माह में कितना-कितना तारीख पर कार्य किया, परन्तु कितना माह में कितने दिन प्रार्थी के द्वारा किया गया इस बारे में स्पष्ट उल्लेख है। भुगतान रजिस्टर के आधार पर प्रार्थी के द्वारा सन् 1980 में दिसम्बर, जनवरी, फरवरी, मार्च, अप्रैल जैसा कि उल्लेख किया जा चुका है, क्रमशः 22, 26, 21, 23 एवं 24 दिन कार्य किये जाने का उल्लेख है व पई माह में 25 दिन, परन्तु दिनांक 20-5-80 तक मई माह में प्रार्थी के कार्यदिवसों की गणना की जानी है, व प्रार्थी के द्वारा मई माह में 20 दिन का कार्य किया जाता हो सम्मिलित किया जाएगा, जिसमें रविवार भी सम्मिलित होंगे। यदि रविवार को सम्मिलित नहीं किया जाये तो मई माह में प्रार्थी के द्वारा 17 दिवस, कार्य दिवस होंगे, जिनके अनुसार सन् 1980 में उसके द्वारा 133 दिन वास्तविक रूप से कार्य किया गया। प्रार्थी की ओर से सन् 1979 में सितम्बर, अक्टूबर, नवम्बर माह में के बावत न तो भुगतान रजिस्टर प्रस्तुत हुआ है व न वर्कशीट। ऐसी स्थिति में प्रार्थी के कथन पर कि उसी उक्त अवधि में कितने दिन कार्य किया, पर अवकाश किये जाने का कोई कारण प्रतीत नहीं होता। प्रार्थी के अनुसार उसने सितम्बर, अक्टूबर, नवम्बर, 1979 में क्रमशः 15, 26, व 25 दिन कार्य किया। इस प्रकार उनके द्वारा कार्यदिवसों की

संख्या सितम्बर, 1979 से लेकर मई, 1980 तक 199 हो जाती है। प्रार्थी के विद्वान प्रतिनिधि का तर्क है कि अधिनियम, 1947 की धारा 25-बी (2) के प्रावधानों के अनुसार कार्य दिवसों की गणना करने हेतु रविवार व अन्य अवकाशों को भी सम्मिलित किया जाना चाहिए। उन्होंने इस संदर्भ में आर. एल. आर. 1991(1) 793 आन सिंह बनाम यूनिवर्सिटी ऑफ राजस्थान व एक अन्य व आर. एल. आर. 1989 (1) 624 बाबूलाल शर्मा बनाम यूनिवर्सिटी ऑफ अजमेर व एक अन्य को उद्धृत किया है, जिनमें यह अभिनिर्धारित किया गया है कि रविवार एवं अन्य अवकाश अधिनियम, 1947 की धारा 25-बी(2) के प्रयोजनार्थ 240 दिन कार्य दिवसों की गणना करने हेतु सम्मिलित किये जाने चाहिये। यदि रविवार एवं अन्य अवकाश जैसे होली, क्रिश्मस, गांधी जयन्ती व दीपावली को उक्त कार्य दिवसों में सम्मिलित कर दिया जाये तो उनकी संख्या 41 होती है व इस प्रकार प्रार्थी के कुल कार्यदिवसों की संख्या सितम्बर, 1979 से 20-5-80 तक 240 दिन हो जाती है। इस प्रकार प्रार्थी के द्वारा उक्त अवधि में 240 दिन अप्रार्थीगण के अवीन बतौर आकस्मिक श्रमिक के दैनिक वेतन मजदूरी के आधार पर कार्य करना प्रमाणित है।

बिन्दु संख्या 2:— अप्रार्थीगण के विद्वान अधिवक्ता का तर्क है कि प्रार्थी की सेवा समाप्ति अधिनियम, 1947 की धारा 2 (ओओ) के अन्तर्गत छंटनी की परिभाषा में नहीं आती। उनका तर्क है कि प्रार्थी की दिनांक 21-5-80 में सेवा समाप्ति हुई ही नहीं। उनका तर्क है कि प्रार्थी के द्वारा भुगतान रजिस्टर प्रदर्श एम-6 की प्रविष्टि के आधार पर उसे मई, 1980 में 25 दिन के कार्य दिवसों का भुगतान किया गया है, जिससे स्पष्ट है कि प्रार्थी की सेवा समाप्ति दिनांक 20-5-80 की, की ही नहीं गई। उनका यह भी तर्क है कि प्रार्थी को 7/- रुपये प्रतिदिन की दर से दैनिक मजदूरी के आधार पर कार्य कराया गया था, जब कि उसने स्वीकार किया है कि वह सेवा समाप्ति के पश्चात् 600-700 रुपये प्रतिमाह अर्जित कर लेता था। उनका यह भी तर्क है कि प्रार्थी के द्वारा कोई स्पष्टीकरण नहीं दिया गया कि "क्योंकि" उसने अप्रार्थी के द्वारा सेवा समाप्ति करने के बारे में कार्यवाही नहीं की। उनका तर्क है कि ऐसी परिस्थितियों में यह निष्कर्ष नहीं निकाला जा सकता कि प्रार्थी की सेवा समाप्ति अप्रार्थी के द्वारा की गई व प्रार्थी के द्वारा स्वयं सेवा से त्याग करता प्रमाणित होता है। दूसरी ओर प्रार्थी के विद्वान प्रतिनिधि का तर्क है कि प्रार्थी के द्वारा देरी में विवाद उठाने का संतोषजनक कारण बताया गया है व अप्रार्थी ने जवाब में स्वीकार किया है कि दिनांक 20-5-80 के पश्चात् प्रार्थी कार्य पर नहीं आया तो यह नहीं कहा जा सकता कि प्रार्थी ने दिनांक 20-5-8 के पश्चात् भी कार्य किया। अधिनियम 1947 की धारा 2 (ओ ओ) के अन्तर्गत छंटनी की परिभाषा निम्न प्रकार दी गई है :—

2(oo) "retrenchment" means the termination by the employer of the service of a workman for any

reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the service of the workman as a result of the nonrenewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the service of a workman on the ground of continued ill-health."

उक्त परिभाषा के अनुसार सेवा समाप्ति छंटनी की परिभाषा के अन्तर्गत आने हेतु सेवा समाप्ति नियोजनकर्ता के कृत्य के द्वारा होना आवश्यक है जैसाकि (1998) 8 एस. सी. सी. 733 स्टेट ऑफ हरियाणा बनाम ओम प्रकाश में अभिनिर्धारित किया गया है। 2000 (2) डब्ल्यू. एल. सी. (राजस्थान) पृष्ठ 649 नरेन्द्र सिंह सोलंकी बनाम राँ एण्ड फिनिशिंग प्रोडक्शन व अन्य के मामले में अभिलेख पर सेवा समाप्ति के बारे में कोई आदेश नहीं था। सेवा समाप्ति दिनांक 1-5-81 को हुई थी, जब कि श्रम न्यायालय में दिनांक 19-1-1985 को कार्यवाही की गई। 4 वर्ष के अन्तराल का कर्मकार के द्वारा कोई स्पष्टीकरण नहीं दिया गया। उक्त परिस्थितियों में निकाला गया निष्कर्ष कि कर्मकार ने अपनी सेवाओं का त्याग कर दिया था, दूषित नहीं पाया गया। प्रस्तुत मामले में सेवा समाप्ति दिनांक 21-5-80 में बताई गई है। प्रार्थी के द्वारा सर्वप्रथम विवाद सेवा समाप्ति के बारे में सन् 1995 में 21-5-80 से 15 वर्ष पश्चात् श्रम कल्याण अधिकारी के समक्ष उठाया गया। प्रार्थी ने कथन किया है कि उसे सेवा में पुनः नियोजित करने का आश्वासन दिया गया था व उस विधि व नियमों का ज्ञान न होने के कारण वह तुरन्त विवाद नहीं उठा सका। प्रतिपरीक्षा में उसका कथन है कि उसने निगम को सेवा समाप्ति के बाबत न तो कोई नोटिस दिया व न कोई प्रार्थना पत्र प्रस्तुत किया व उसने 15 वर्ष तक सेवा समाप्ति के बाबत कोई जिकाया भी नहीं की। दूसरी ओर धनराज आसोपा का कथन है कि मई, 1980 के पश्चात् प्रार्थी कभी भी कार्य पर नहीं आया। उसे ऐसा कोई सुझाव भी नहीं दिया गया कि प्रार्थी मई, 1980 के पश्चात् कार्य करने के लिये कभी उपस्थित हुआ हो व उसे कार्य पर लेने में इन्कार किया गया हो। ऐसी दशा में प्रार्थी के कथन पर कैसे विश्वास किया जा सकता है कि मई, 1980 के पश्चात् प्रार्थी निभम के कार्यालय में कार्य हेतु उपस्थित हुआ। प्रार्थी के द्वारा 15 वर्ष तक सेवा समाप्ति के बाबत विवाद इस आधार पर न उठाने का कि उसे विधि का ज्ञान नहीं था, कोई संतोषजनक कारण प्रतीत नहीं होता। इस प्रकार इतनी लम्बी अवधि के पश्चात् विवाद उठाने के बारे में वह कोई संतोषजनक स्पष्टीकरण

नहीं दे पाया। इस बारे में तो कोई विवाद नहीं है कि विवाद उठाने की कोई समय-सीमा निर्धारित नहीं है, परन्तु इस निष्कर्ष पर पहुंचने में उक्त न्याय कि क्या प्रार्थी की सेवा अप्रार्थी द्वारा समाप्त की गई अथवा उसने स्वयं सेवा का त्याग कर दिया, सहायक है जैसा कि माननीय राजस्थान उच्च न्यायालय ने उक्त न्याय दृष्टान्त में निष्कर्ष निकाला है, जिसमें कि केवल चार वर्ष की देरी से विवाद उठाने का स्पष्टीकरण कर्मकार नहीं दे पाया था। प्रस्तुत मामले में तो विलम्ब 15 वर्ष का है। दूसरे प्रार्थी अप्रार्थीगण के अधीन 7/- रुपये प्रतिदिन की मजदूरी पर कार्यरत था व उसके पश्चात् उसने स्वीकार किया है कि वह सेवा समाप्ति के पश्चात् 600-700 रुपये मासिक अर्जित कर लेता था। इससे भी ऐसा प्रकट होता है कि प्रार्थी अप्रार्थी के नियोजन में रहने हेतु इच्छुक नहीं था। तीसरे प्रार्थी के द्वारा भुगतान रजिस्टर प्रवर्ष एम-6 की प्रविष्टि के आधार पर यह प्रमाणित है कि उसने मई, 1980 में 25 दिन कार्य किया, जिससे यह प्रकट होता है कि प्रार्थी 20 मई के पश्चात् भी अप्रार्थी के नियोजन में रहा है। यह भी उल्लेख करना उचित होगा कि प्रार्थी ने दिनांक 23-5-2000 को एक आवेदन प्रस्तुत किया है, जिसमें उसके द्वारा उल्लेख किया गया है कि उसने डेस्क आफिसर एवं सचिव श्रम मंत्रालय, भारत सरकार, नई दिल्ली को प्रार्थना-पत्र प्रस्तुत किया है, जिसमें उसने सेवा पृथक की तिथि दिनांक 21-5-80 के स्थान पर 31-5-80 संशोधित किये जाने हेतु निवेदन किया है, जिससे भी प्रकट होता है कि प्रार्थी स्वयं ही इस बारे में स्पष्ट नहीं है कि उसकी सेवा दिनांक 21-5-80 से अप्रार्थी के द्वारा समाप्त की गई। उक्त सभी परिस्थितियों को दृष्टिगत रखते हुए यह नहीं कहा जा सकता कि प्रार्थी की सेवा दिनांक 20-5-80 से अप्रार्थी के कृत्य द्वारा समाप्त की गई व यह निष्कर्ष निकलता है कि प्रार्थी ने स्वयं सेवा का परित्याग कर दिया, जो कि अधिनियम 1947 की धारा 2 (ओओ) के अन्तर्गत "छंटनी" की परिभाषा में नहीं आता। परिणामतः अधिनियम 1947 की धारा 25-एफ, जी, एच व नियम 1957 के नियम 77, 78 प्रस्तुत मामले में आवृष्ट नहीं होते। यह भी उल्लेख करना उचित होगा कि प्रार्थी ने शपथ पत्र में उल्लेख किया है कि नियोजक ने उसके बाद के श्रमिकों को उसकी सेवा समाप्ति के बाद बनाये रखा। उसका कथन है कि श्रोम प्रकाश, सीता राम, साबिर निगम कार्यालय में कार्य करते हैं, परन्तु उसका कथन है कि यह तीनों व्यक्ति उससे पूर्व से कार्य करते थे, अतः वे उससे कनिष्ठ नहीं कहे जा सकते। अतः यह भी प्रमाणित नहीं है कि प्रार्थी की सेवा समाप्ति के पश्चात् उससे कोई कनिष्ठ श्रमिक अप्रार्थी के नियोजन में रहा। अधिनियम 1947 की धारा 25-एच पुनः नियोजन के बारे में है न कि सेवा समाप्ति के बारे में। निर्देश प्रार्थी की सेवा समाप्ति विधिक एवं उचित है अथवा नहीं के बारे में किया गया है। अधिनियम 1947 की धारा 25-एच का अप्रार्थी के द्वारा उल्लंघन किये जाने के बारे में निर्देश आदेश में कोई उल्लेख नहीं है। अतः इस बारे में अधिकरण विचार भी नहीं

कर सकता, अतः उक्त बिन्दु का विनिश्चय प्रार्थी के विरुद्ध किया जाता है।

बिन्दु संख्या 3:— प्रार्थी ने स्वीकार किया है कि सेवा समाप्ति के पश्चात् भी वह 600-700 रुपये मासिक मजदूरी अर्जित कर लेता था। इस प्रकार यह नहीं कहा जा सकता कि वह सेवा समाप्ति के पश्चात् से बेरोजगार रहा है।

बिन्दु संख्या 4:— बिन्दु संख्या-2 के विनिश्चय के आधार पर प्रार्थी की सेवा समाप्ति अनुचित एवं अवैध नहीं कही जा सकती व प्रार्थी कोई सहायता प्राप्त करने का अधिकारी नहीं है।

पंचाट की प्रतिलिपि केन्द्रीय सरकार को अधिनियम 1947 की धारा 17 की उपधारा (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जाय।

ह./-

पीठासीन अधिकारी

नई दिल्ली, 30 मई, 2001

का. आ. 1367.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम. सी. एल. के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय राऊकेला के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-5-2001 को प्राप्त हुआ था।

[सं. एल-22012/564/94-आई आर (सी-II)]
एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 30th May, 2001

S.O. 1367.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Rourkela as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of MCL and their workman, which was received by the Central Government on 28-5-2001.

[No. L-22012/564/94-IR(C-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

IN THE COURT OF PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL, ROURKELA

Industrial Dispute Case No. 79/97(C)

Dated, the 8th December, 2000

PRESENT :

Sri Alak Kumar Dutta,
Presiding Officer,
Industrial Tribunal,
Rourkela.

BETWEEN

The General Manager,
Rampur Colliery, Orient Area,
Mahanadi Coalfields Ltd.,
PO. Brajrajnagar,
Jharsuguda.

... Ist party.

AND

Sri Anirudha Mahanadia,
S/o Tirtha Mahanadia,
At : Lamtibahal, Khindapada,
Via : Brajrajnagar,
Jharsuguda.

... IInd party.

APPEARANCES :

For the Ist party—Sri S. P. Gupta, Area P.M.

For the IInd party—Sri N. C. Mohanty, Advocate.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of I.D. Act, have referred the following dispute for adjudication vide No. L-22012/564/94-IR(C-II) dated 26-5-95 :

“Whether the action of the management of Rampur Colliery, Mahanadi Coal Fields Limited, PO. Brajrajnagar, District Jharsuguda in terminating the services of Sri Anirudha Mahanadia, At. Khindapada, PO. Lamtibahal District Jharsuguda vide management's letter dated 13-7-92 was justified? If not, what relief the workman is entitled to?”

2. The case of the 2nd party workman in brief is as follows :

He was working as Badli Loader under the management of Himgir Rampur Colliery, M.C.L. from 27th November, 1978. He was issued with identity card. But after more than 13 years of service, he was removed from services on 13-7-92 on verbal order without assigning any reason. He made several representations but to no avail. So he preferred an appeal on 28-4-93 before A.L.C., Central, Rourkela. The A.L.C. issued notice to the management and management receiving notice conducted a departmental proceeding on trumped up allegation of unauthorised absence from duty. The chargesheet was back dated. No enquiry notice was served on him. The enquiry was conducted ex-parte. Copy of the finding and enquiry proceedings were not given to him. That means the domestic enquiry was not conducted in a fair and proper manner.

3. In reply, the management submits that the 2nd party workman was working as Badli Loader and was a habitual absentee from work for which his service could not be regularised and that several times he was warned and finally he was chargesheeted on 13-11-91

for his habitual unauthorised absence. Receiving the chargesheet he did not submit any reply. Therefore enquiry committee was constituted. He was noticed to attend the enquiry which he did not attend. The enquiry was conducted ex-parte and the E.O. gave his finding holding him guilty. Ultimately he was terminated from service on 13-7-92. The management claims that the enquiry was conducted in fair and proper manner following the principles of natural justice.

4. On the aforesaid analysis, following issues have been framed :

I. Whether the domestic enquiry conducted against the 2nd party workman is fair and proper.

II. Whether the action of management in terminating the services of Sri Anirudha Mahanadia vide management's letter dated 13th July, 1992 was justified?

III. If not, what relief the workman is entitled to?

5. Issue Nos. I to III.—All the issues are taken up together as all are interlinked. The 1st thing is to be seen whether the domestic enquiry was conducted in a fair and proper manner. If it has been so conducted, then it is to be seen whether the termination was proper or not or the 2nd party can be given any relief. If on the other hand, the domestic enquiry is found to be not conducted properly, then the 2nd party is entitled to the relief as his termination is illegal.

6. W.W.1, the 2nd party categorically states that after his termination he appealed before the A.L.C. (C) vide Ext. 4 and the A.L.C. called both parties for conciliation and in the conciliation meeting the management for the first time disclosed that there was domestic enquiry against him and as per that enquiry he was dismissed from service. He states that he was never served with any chargesheet, enquiry notice to attend enquiry on any date. He was not served with any enquiry report or dismissal order.

7. M.W.1 is office Superintendent of M.C.L. He states that for habitual absence from duty, the 2nd party was chargesheeted on 13-11-91 vide Ext. C. The chargesheet was served on him personally through office Peon Book vide Ext. D. The 2nd party did not reply to the chargesheet. The management constituted the enquiry committee vide Ext. E. He was the management representative in that enquiry. The enquiry was conducted ex-parte. F, G and H for different dates to the 2nd party and the attendance clerk served the enquiry notice on the 2nd party and the 2nd party did not attend the enquiry. The enquiry was conducted ex-parte. He proves Ext. J as the enquiry proceedings and Ext. K as the enquiry report. The charge was established. The disciplinary authority terminated the service vide Ext. L. He proves Ext. M as the certificate of attendance clerk Birsu Munda regarding serving of enquiry notice on the 2nd party. He proves Ext. N as the certificate of Peon Gunasagar Sahu regarding his serving the termination notice on the 2nd party. He cannot say if copy of Ext. E was actually served on the 2nd

party. He denies that Ext. M and N are manufactured documents. M.W. 2 is Birsu Munda. He states that he handed over the letter No. HRC[PER] 76/1075 dated 27-2-92 in person to the 2nd party and Ext. M is his declaration in this regard. (this letter is the enquiry notice Ext. H) He states that this letter was handed over to 2nd party on 26-2-92. So that he would attend the enquiry on 27-2-92. He states that the 2nd party put his signature on the peon book on 26-2-92 and that peon book might be available in the office. M.W. 3 is Gunasagar Sahu. He states that he handed over this letter SOH MGR 146 dated 13-7-93 (termination order, Ext. L) to the 2nd party in person and Ext. N is his declaration in this regard. He admits that he did not obtain the signature of the 2nd party handing over this letter. The 2nd party did not sign on any paper receiving this letter. This declaration was typed in his office and he was asked to sign and he cannot say on which date he signed it.

8. The learned representative of the 2nd party submits that there is no evidence that chargesheet, enquiry notice, enquiry proceedings, finding and dismissal order were served on the 2nd party. Without service of the same, enquiry has been conducted and dismissal order has been passed which violates the principles of natural justice and also violates the certified standing orders of the management. In reply, the learned representative of the 1st party submits that all these have been served on the 2nd party.

9. The management has not proved that chargesheet was actually served on the 2nd party. The 2nd party denies receiving enquiry notice. M.W. 2 claims about serving the same on the 2nd party who received it putting signature on the peon book and that peon book is available in the office. So this is the best piece of evidence to prove that the enquiry notice was actually served on the 2nd party. Surprisingly that peon book has not been proved. There is no evidence that the enquiry finding was served on the 2nd party. Without serving the same punishment has been awarded. Even M.W. 3 states that he served the dismissal order on the 2nd party, but did not obtain his signature in respect of it though the 2nd party knows how to sign. I am fully satisfied that the management has not at all proved that chargesheet was issued to the 2nd party, enquiry notice was served on him, enquiry finding and dismissal order were also served on him. Therefore, the domestic enquiry has been conducted violating the principles of natural justice and certified standing order of the management.

10. Therefore the management was not justified in terminating the services of 2nd party basing on such enquiry. Therefore the workman is entitled to reinstatement with full back wages.

ALAK KUMAR DUTTA, Presiding Officer

नई दिल्ली, 30 मई, 2001

का आ 1368—औद्योगिक विवाद अधिनियम, 1947 (1947 का 11) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ सी आई. के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुरोध में निर्दिष्ट

औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अथ न्यायालय लखनऊ में पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-5-2001 का प्राप्त हुआ था।

[स एन-22012/392/98-पार्ट आर (सी-II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 30th May, 2001

S.O. 1368.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 28-5-2001.

a [No. L-22012/392/98-IR(C-II)]

N. P. KESHAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

Presiding Officer : Rudresh Kumar
ADJUDICATION

I.D. No. 126/2000

Kanpur, No. 109/99

BETWEEN

The State Secretary,
Bhartiya Khadya Karmchari Sangh,
5-6, Habibullah Estate, Hazratgani,
Lucknow.

AND

The Distt. Manager,
Food Corporation of India,
Civil Lines,
Jhansi.

AWARD

By reference No. L-22012/392/98-IR(CM-II) dated 24-5-1999, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of Sub-section (1) and sub-section 2(A) of section 10 I.D. Act, 1947 made over this industrial dispute between State Secretary, Bhartiya Khadya Karmchari Sangh, Lucknow espousing cause of Mangal Chand and the Distt. Manager, Food Corporation of India, Civil Lines, Jhansi for adjudication.

The reference is re-produced as under :—

“Whether the Management of Food Corporation of India was justified in passing the penalty order 18-03-1997 against Sh. Mangal Chand ? If not, to what relief the workman is entitled ?”

2. The workman, Mangal Chand, in the month of Nov. 1996 was working at District Office, Jhansi. On 23-11-96 he used abusive and most unparliamentary language against Sri Bal Chandran, Asstt. Manager (Admn.) and threatened him, in the presence of the employees of the administrative branch of the office. He also misbehaved with Sri Chandran, Asstt. Manager (Admn.) Food Corporation of India, District office, Jhansi on 24-11-96 as complained by him. Prior to it, on 16-9-96 he was deputed at rail head Jhansi in escorting of Food Corporation of India's stock loaded trucks but he created a bad scene and disturbed working by his intoxicated behaviour and used abusive language against his senior officers. Again, on transfer at FSD, Lalitpur, he did not work there properly and was roaming at Jhansi even on Republic Day i.e. 26-1-1997. The workman was placed under suspension vide order No. A/23(290)|DIG|Jhs|96|729 dated 28/29-11-1996 (Confidential) pending enquiry. However, the suspension order, was, later recalled on his showing repentance.

3. The District Manager by his letter No. A/28(200)|JHS|VIG|96|113 dt. 15-2-97 (Confidential) informed him about proposed action under rule 16 of CCS Rules (CCA) Rules 1965 and Regulation 60 of FCI Staff Regulation, 1971. The annexure with the said letter gave statement of imputations, mis-conduct and mis-behaviours. The workman in reply to the said show cause notice, furnished detailed reply on 16-12-96. The District Manager, also the disciplinary authority, Mr. Ashraf Ali, by his order No. A/23(290)|JHS|VIG|96|228 dt. 18-3-97 passed order by which he imposed penalty in shape of three future annual increments of 1998, 1999 and 2000 without cumulative effect. The said order also mentioned that Mangal Chand was placed under suspension but the said order was revoked on 24-1-97 and so nothing would be payable to him over and above subsistence allowance for his suspension period. It is this order dt. 18-3-97 is challenged in this industrial dispute.

4. Two issues were framed on 7-3-2001 namely :—

- (i) whether the domestic enquiry was fair and proper, and
- (ii) whether findings of the disciplinary authority suffers with vice of perversity ?

Issue No. 2 was re-cast “Whether the penalty imposed on the workman suffers with vice of perversity”.

5. It is conceded that no formal enquiry was held and the penalty was imposed after issuing show cause notice and following procedures prescribed for minor penalties.

6. Regulation 54 deals with penalties prescribing minor and major penalties. Regulation 60 gives procedure for minor penalties.

7. In the present case, there is no dispute as to following of the prescribed procedure. A show cause notice detailing commission on the part of the workman are detailed.

8. The Divisional Manager in his order discussed points raised in the reply and has commented about the language and tenor of the reply. There is no evidence to controvert the finding of the Disciplinary Authority. The order is not sketchy, but elaborately discussed the reply, which proves conscious application of mind of the Disciplinary Authority.

9. There appears by inproperiety of illegality in the penalty order or the procedure followed before imposing minor penalty.

10. Accordingly, the reference is answered against the workman. He is not entitled to any relief.

LUCKNOW

15-5-2001.

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 30 मई, 2001

का. प्रा. 1369.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उच्च. सी. एल. के प्रसन्नचतल के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अम न्यायालय

जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-5-2001 को प्राप्त हुआ था।

[सं. एल-22012/369/92-आई आर (सी-II)]
एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 30th May, 2001

S.O. 1369.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 28-5-2001.

[No.L-22012/369/92-IR(C-II)]
N. P. KESHVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Case No. CGIT/LC(R)(158)/93

General Secretary,
M.P.K.M.U. (IFTU),
P.O. AMBARA,
Dist. Chhindwara (MP). .. Workman.

Vs.

Manager, Ambara Colliery,
P.O. Ambara, Dist. Chhindwara (MP).
.. Management.

AWARD

(Passed on this 3rd May, of 2001)

Govt. of India, Ministry of Labour, New Delhi has referred this dispute vide letter No. L-22012/369/92—IR(C-II) dated 23-8-97 for adjudication as under :—

“Whether the demand of the union for wage protection to S/Shri Rajinder S/o Janeshwar, Ramrattan S/o Ramkishore and Hanskumar S/o Balakram Piece rated tub loader of Ambara Colliery, WCL, Kanhan Area converted to time rated job due to their disability caused by the mining injury while in duty is justified? If so, to what relief the workmen are entitled to?”

2. Parties filed written statement praying for passing award in terms thereof. Application is considered and allowed.

In view of terms of settlement it is hereby ordered that the Group wages to workmen Shri Rajender, Hanskumar and Shri Ramrattan will be protected with immediate effect. Their protected wages will be paid from salary of November, 2000 payable in December, 2000. Workmen will not claim for payment of back wages or any arrears for group wages protection in future from the date of conversion from PR to TR job, till starting of payment of protected wages.

In the instant case, workman will not quote this case as precedence in future in any other case. Workman will not raise any dispute in future either by this union or through any other union before any authority, statutory or non-statutory judicial in respect of this settlement. This settlement shall be treated as full and final in all respects.

Copy of this award be sent to the Govt. of India, Ministry of Labour, New Delhi for publication as per rule.

Sd/-
Illegible
Presiding Officer

नई दिल्ली, 30 मई, 2001

का. आ. 1370.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उक्त सी. एल. के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मचारों के बीच, अनबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-5-2001 को प्राप्त हुआ था।

[सं. एल-22012/368/92-आई आर (सी-II)]
एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 30th May, 2001

S.O. 1370.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 28-5-2001.

[No. L-22012/368/92-IR(C-II)]
N. P. KESHVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Case No. CGIT|LC(R)|(67)|93

Parties

General Secretary,
M. P. Khadan Mazdoor Union (IFTU),
P.O. Ambara,
Dist. Chhindwara (MP). Workman.

Vs.

Manager, Mohan Colliery,
P.O. Junnardeo, Dist. Chhindwara (MP).
.. Management.

AWARD

(Passed on this 3rd day of May, 2001)

Govt. of India, Ministry of Labour, New Delhi has referred this dispute vide letter No. L-22012|368|92-IR(C-II) dated 17-3-93 for adjudication as under :—

“Whether the demand of the union for wage protection of Shri Mangloo S/o Roshan Ex. Tub Loader Mohan Colliery, W.C. Ltd., Kanhan Area who has already suffered loss of control of his limb due to the mining injury is justified ? If so, to what relief the workman is entitled to ?”

2. Workman filed an application praying for passing no dispute award in the present case.

3 This application has been filed by the workman voluntarily. He does not want to press his claim as per reference.

4 In view of aforesaid application no dispute between parties exists. Hence no dispute award is passed.

5. In view of aforesaid reason, workman is not entitled for any relief as per terms of application in this case.

Copy of this award be sent to the Govt. of India, Ministry of Labour, New Delhi for publication as per rule.

Sd/-

Illegable
Presiding Officer

नई दिल्ली, 30 मई, 2001

का. आ 1371—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रवन्धत्व के सबब नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ के पचाट का प्रकाशित करती है, जो केन्द्रीय सरकार को 28-5-2001 को प्राप्त हुआ था।

[स एल-22012/21/88-आई आर (सी-II)]
एन पी केशवन, डेस्क अधिकारी

New Delhi, the 30th May, 2001

S.O. 1371.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 28-5-2001

[No. L-22012|21|88-IR(C-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE SHRI B. L. JATAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 42 of 1990

General Secretary,
Food Corporation of India Worker's Union, 7901, Ram Nagar, Nai Basti Paharganj, New Delhi-110055.

Petitioner

Vs.

Distt Manager
Food Corporation of India
D.L.F. Colony
P Office Gurgaon—122001.

Respondent.

REPRESENTATIVES:

For the workman—None.

For the Management—Shri Pramod Jain

AWARD

(Passed on 11th April, 2001)

The Central Govt. Ministry of Labour vide Notification No. L-42018|21|88-D.IV(B) dated 2nd April 1990 has referred the following dispute to this Tribunal for adjudication.

“Whether the action of the Management of Food Corporation of India in relation to the Distt. Manager, Gurgaon in denying the payment of ex-gratia in lieu of bonus as

per National Tribunal Award, Bombay to 376 workers (list enclosed) worked under Labour late System for the accounting year 1982-83 and 1983-84, is justified and fair? If not, to what relief the workmen concerned are entitled?"

2. Today the case was fixed for appearance of the workman Union. None has put up appearance on behalf of the Union despite several notices. It appears that workman/Union is not interested to pursue with the present reference. In view of the above, since the workman is not interested to pursue with the present reference, the name is returned to the Ministry for want of prosecution. Appropriate Govt. be informed.

Chandigarh
12-4-2001.

B. L. JATAV, Presiding Officer

नई दिल्ली, 30 मई, 2001

का. आ. 1372.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-5-2001 को प्राप्त हुआ था।

[सं. एल-22012/57/99-आई. आर. (सी-II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 30th May, 2001

S.O. 1372.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Hyderabad, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workman, which was received by the Central Government on 28-5-2001.

[No. L-22012/57/99-IR(C-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT
HYDERABAD

PRESENT:

Sri Syed Abdullah, B.Sc., B.L., Industrial Tribunal-I.
Dated, 29th day of March, 2001
Industrial Dispute No. 34 of 1999

BETWEEN

The vice President,
S.N. & E.W. Union (HMS),
D-2156, Thilak Nagar,
Godavari Khani,
Karimnagar.

...Petitioner

1709 CY/2001—15

AND

1. The General Manager,
M/s. SCCL, Opencase-II & III,
Godavarikhani, Karimnagar-505 209.
2. The General Manager,
M/s SCCL, Ramagundam-III Division,
Godavarikhani, Karimnagar-505 209.

... Respondents

APPEARANCES:

Sri K. Vasudev Reddy, Advocate—for the petitioner.

Sri J. Parthasarthy V. Hariharan & A. Chandra-Sekhar, Advocates—for the respondents.

AWARD

The Government of India, Ministry of Labour made a reference to this Tribunal vide its order No. L-22012/57/99-IR (C-II) dated 24-5-99 for adjudication of the following dispute between employers in relation to the management of M/s. S.C.C. Limited and their workmen in respect of the matters specified in the following :—

SCHEDULE

"Whether the action of the Management of M/s. S.C.C. Ltd., Ramagundam in not regularising Sh. P. Venkat Ratnam and 9 other E.P. Fitters/Mechanics (List enclosed) working as Acting Foreman is legal and just? If not, to what relief they are entitled?"

Both parties appeared and filed their respective pleadings.

2. After filing the statements by both sides the matter was posted for enquiry adjourning it from time to time sufficient opportunity was given to both the parties to prosecute their case. Both the parties particularly the petitioner failed to show any interest to proceed with the case.

3. On 29-3-2001 also there was no representation for the petitioner and he was continuously not attending and it shows that the petitioner-union has no interest to proceed with the case. Hence the claim covered by the dispute is dismissed by passing 'NIL' award.

Given under my hand the seal of this Tribunal on this the 29th day of March, 2001.

SYED ABDULLAH, Industrial Tribunal-I

नई दिल्ली, 30 मई, 2001

का.आ. 1373.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय पखनऊ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-5-2001 को प्राप्त हुआ था।

[सं. एल-22012/139/2000-आई. आर. (सी-II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 30th May, 2001

S.O. 1373.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal|Labour Court, Lucknow, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 28-5-2001.

[No. L-22012|139|2000 IR(C-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

Presiding Officer : Rudresh Kumar

ADJUDICATION

I.D. No : 210|2000

BETWEEN

The State Secretary,
Bhartiya Khadya Nigam Karmchari Sangh,
5-6, Habibullah Estate, Hazratganj,
Lucknow,
(Espousing cause of I P. Verma)

AND

Sr. Regional Manager,
Food Corporation of India,
5-6 Habibullah Estate, Hazratganj,
Lucknow (U.P.),

AWARD

By reference No. : L-22012|139|2000 IR(CM-II) dated 21-11-2000, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Dispute Act, 1947 (14 of 1947) made over this industrial dispute between The State Secretary, Bhartiya Khadya Nigam Karmchari Sangh, Lucknow espousing cause of I P. Verma and the Sr. Regional Manager, Food Corporation of India, Lucknow for adjudication.

The reference is re-produced as under :

“Whether the action of the management of FCI in imposing Penalty of stoppage of three increments with cumulative effect upon Sh. I. P. Verma, A.G.-III (D) and Rejecting appeal vide order dated 27-03-1988 and orders of the reviewing authority dated 15-03-2000 were legal and justified? If not, to what relief the workman is entitled?”

2. The facts of the case are.—that during the year 1979-81 the workman, I. P. Verma, was posted as A.G.-III (Depot) FSD/FCI, Bilsanda district Pilibhit. One Sri R. C. Chauhan was Depot Incharge and superior to him. As incharge of the godown he was accountable for efficient management of the Depot,

beside liable for any shortage in the stock, since the key of the godown was kept by him. Sri R. C. Chauhan was a frequent absentee from duty and this fact was well known to high authorities. A number of correspondences had been made to obtain key of the godown from him but the management had not succeeded. Sri M. D. Saxena, District Manager, FCI, Bareilly, alongwith a large number of persons visited the office of said Sri R. C. Chauhan, Asstt.-II (Depot) incharge of the Bilsanda Depot, on 30-7-80 and noted various deficiencies. Prior to it, the District Manager, FCI, Bareilly had made surprise check on 8-6-80 and had noted absence of Sri R. C. Chauhan and 8 other persons.

3. Subsequently, it was found that FCI had to suffer loss of Rs. 15,33,999/- due to shortage of stock, occasioned due to non-maintenance of proper records, as well, damage of food grains. It is admitted that Sri R. C. Chauhan was dismissed from service. However, the management chose to hold an enquiry against the workman also and issued a charge sheet vide Memo No. : A|23(1323)|81-VIG dated 15-1-1986. The single charge read as follow :

“That Sri I. P. Verma while posted and functioning as AG-III(D) FSD|Food Corporation of India, Bilsanda District Pilibhit during the year 1979—81 failed to maintain absolute integrity and devotion to duty and committed misconduct in as much as he did not follow the guide lines given in the Job Description Part-II which resulted in the shortage of stocks and non-maintenance of proper records causing total shortage of food grains worth Rs. 15,33,999/- approx and thereby contravened Regulation 1971”.

4. Sri B. D. Pathak was appointed as Enquiry Officer to enquire into the charge. The workman alongwith his representative participated in the domestic enquiry. The enquiry officer, Sri B. D. Pathak came to conclusion that the charge against the workman was not proved and he submitted his report to the disciplinary authority, accordingly. The conclusion of the enquiry report is re-produced as under :

FINDINGS AND CONCLUSION

“Entire Prosecution and Defence case and documents and assessment of the respective pleas have been narrated and examined in the preceding section. There is no need to repeat the these again. However, it may be mentioned that the entire case is based on the violation of Job Description. The Job Description of an AG-III is only to assist his Depot Incharge in documentation and to work in close supervision and as per direction of the Incharge of the Depot. An AG-III can not strictly be held responsible for acts of omission and commission of his seniors. An AG-III as it is holds no charge of stocks and does not act independently. He can be held responsible only if any shortage or damage can be traced as a direct consequence of his acts which were done without orders of his Incharge or against the orders of the Incharge. No such documents has been produced. Nor

any specific violation of the Job Description has been cited. However all the direct/circumstantial evidence in this case proves that Sri R. C. Chauhan the Depot Incharge is responsible for the losses and other irregularities. None of the Inspecting Officers including the District Manager in any of the Report/Communication has pointed out any irregularity on the part of Sri I. P. Verma, AG-III Bilsanda. Therefore, in absence of any such proof the mere fact that an AG-III was posted at Bilsanda can not perhaps be considered adequate to hold him responsible for any losses."

5. The disciplinary authority Sri Rajendra Bhonwal, Sr. Regional Manager, FCI by his order No. : A/23 (1323)/81-VIG dated 23-6-87 disagreed with the findings of the enquiry officer and in exercise of powers conferred under Regulation 54 of Food Corporation of India (Staff) Regulation 1971, imposed penalty ordering stoppage of 3 increments with cumulative effect from 1-1-1988. He also forfeited pay of the suspension period except the amount paid towards subsistence allowance. The relevant portion of the order dt. 23-6-87 is reproduced as under :

"And whereas the undersigned after dispassionate examination of enquiry report, records and other factors associated of the case disagrees with the findings of Enquiry Officer that as per job description, AG-III(D) is not responsible for the charges levelled against him. This argument of Enquiry Officer is not justified. The charge of the depot was with AG-II(D) who was Depot Incharge and Sri I. P. Verma was working as AG-III(D) to assist Depot Incharge as such it can not be agreed that such huge shortages of the stock from deposit not in the knowledge of the Asstt. who was associated in day today operations and therefore the undersigned hold their responsible for the failure in performance of his duties and shortages as mentioned in articles of charge.

6. An appeal against this order preferred by the workman to the appellate authority was allowed to the extent of forfeited pay only. A revision by the workman also failed, and thus, this industrial dispute.

7. On hearing parties, a preliminary issue was framed as follow :

"Whether the domestic enquiry held against the workman was just and proper and in accordance with rules ?"

8. Parties were heard on the point of legality of the enquiry and the penalty order passed by the disciplinary authority on 23-6-87. The grievances of the workman are : that the charge was vague and understandable ; that the disciplinary authority did not give reasons for disagreeing with the findings and conclusion of the enquiry officer and failed to appreciate materials on record. It is further submitted that the disciplinary authority was biased, so much so, to jump upon conclusion about involvement of

the workman and his lacking in integrity which is reflected in the charge itself. The entire exercise of domestic enquiry against the workman was mala fide and the disciplinary authority was bent upon to punish the workman, being fully aware about his status as AG-III.

9. The Learned Authorised Representative of the management justified order of the disciplinary authority and stated that he was not bound by the conclusion of the enquiry officer and was competent to disagree with the conclusions in the enquiry. No impropriety was committed in not providing copy of the enquiry report to the workman or by not issuing show cause notice to him. He also tried to justify the charge by stating that huge loss had occurred and by virtue of posting there, the workman should be guilty.

10. Regulation 59(2), governing service matters of the employees, is relevant to evaluate power of the disciplinary authority, in the matter of his disagreement with the conclusions of the enquiry officer. It is pertinent to appreciate that the workman has not questioned bonafides of the enquiry and the findings arrived by the enquiry officer. What is disputed, is, the order of the disciplinary authority dated 23-6-87 contrary to enquiry report. Regulation 59(2) of the FCI Staff Regulation 1971, is reproduced here under :

59 Action of inquiry report :

- 1).....
- (2) The disciplinary authority, if it disagrees with the findings of the inquiring officer on any article of charge, record his reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.
- (3).....
- (4).....
- (5).....

11. It is, thus, evident that Regulation 59(2) cases obligation on the disciplinary authority to record reasons for disagreement with the findings of the enquiry authority and also to record its own findings on the charge, in light of evidence on record.

12. The order of the Disciplinary authority dated 23-6-87 does not comply with the requirements of Regulation 59(2). The disciplinary authority did not record reasons of his disagreement. In fact, Sr. Regional Manager did not discuss available evidence at all. He jumped up on conclusion only on the basis of huge shortage of the stock. This approach was not only faulty but devoid of reasonableness. His reasoning that the workman was posted there and should have been with the losses, is curious one. The superior/inspecting authorities were fully aware with long absenteeism of Sri R. C. Chauhan and possible losses because of it, but he did not pass any order against them.

13. The approach of the Sr. Regional Manager is unsustainable in law, also, because he was duty bound

to hear the workman if he had found sufficient evidence to take a contrary view. There is nothing on record that the disciplinary authority issued any notice to the workman or heard him before passing the order. By not affording opportunity to the workman, the rule of natural justice was violated, rendering his order perverse.

14. Accordingly, the enquiry to the extent, disagreed by the disciplinary authority, was not fair and proper and was also contrary to legal provisions. Any penalty on such vitiated enquiry is un-sustainable.

15. In facts and circumstances of this case, where the enquiry is in favour of the workman and the penalty order was passed contrary to the findings in enquiry, without notice to workman is not legal. This tribunal is under legal obligation to re-hold enquiry as per procedure prescribed under section 11A I.D. Act, by calling upon the management to tender fresh evidence. However, in this case, this exercise is futile.

16. The solitary charge which can not be altered, is vague. It does not specify as what specific breach of duties were committed, what were the commissions or omissions constituted misconduct by the workman. What job regulations were not followed or by what way the workman failed to assist his superiors. Whether any fault was ever noted against him at any point of time. At this distance of time for more than 20 years, the charge can not be altered, which is also beyond authority of this tribunal. Even if management chooses to examine fresh evidence, it can not rectify the charge. In such circumstances, any exercise by this tribunal, asking management to examine fresh evidence is meaningless. The management in his written statement or in any other application has not requested seeking opportunity to tender fresh evidence. The main wrong doer has already been dismissed as conceded by the parties.

17. Thus, in the facts and circumstances of the case, of the provisions of section 11A I.D. Act, stand substantially satisfied if re-enquiry in the defective charge is not held and final award quashing the penalty is passed. Accordingly, the Award is:

(i) that the action of the management of Food Corporation of India in imposing penalty of three increments vide order dated 23-6-87 is illegal; and

(ii) that the workman is entitled to all service benefits as no penalty was imposed on him

Lucknow.

14-5-2001.

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 31 मई 2001

का.मा 1374.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. सी. एन. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अम

न्यायालय हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-5-2001 को प्राप्त हुआ था।

[स. एल-22012/250/99-आई. आर. (सी-II)]

एन पी. केशवन, डेस्क अधिकारी

New Delhi, the 31st May, 2001

S.O. 1374.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workman, which was received by the Central Government on 28-5-2001.

[No. L-22012/250/99-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri Syed Abdullah, B.Sc., B.L., Industrial Tribunal-I.

Dated, 27th day of April, 2001

Industrial Dispute No. 45 of 1999

BETWEEN

The Singareni Collieries Employees Union (Regd. No. E. 171), affiliated to CITU, Hyderabad, rep. by its General Secretary. . . Petitioner.

AND

The General Manager, Singareni Collieries Company Limited, Ramagundam Area-III, Godavari Khani, Karimnagar District. . . Respondent.

APPEARANCES :

Sri G. Vidyasagar, Advocate for the Petitioner.

Sri J. Partha Sarath and V. Hari Haran, Advocates for the Respondents.

AWARD

1. The Government of India by its letter No. L-22012/250/99/IR(CM-II) has referred the dispute for adjudication under Section 2A read with Section 10 of the Industrial Dispute Act in respect of the following issues :

“Whether the action of the Management of M/s. S.C.C.L. OCP-III Ramagundam Area-III, Godavarikhani in dismissing the services of Shri Pittala Venkataiah, General Mazdoor OCP-III, CHP of RG-III Godavarikhani w.e.f. 21-07-1998 is justified?

Whether the workman is entitled for reinstatement with back wages and other consequential benefits?

"If not, to what relief the workmen is entitled?"

The parties to the dispute have put in their appearance and they filed their respective pleadings in support of their respective stand.

2. The General Secretary of S.C.C. Employees Union (CATU), Hyderabad in its claim statement has put forth the following facts :

The above union has espoused the cause of Sri Pittala Venkataiah, Mazdoor (hereinafter referred to as workman) stating that the workman had joined in the respondent's company on 21-9-88 and he discharged his duties satisfactorily. As a Secretary of the union he was representing the grievances of other workmen with the management which was not relished by the management so a false charge sheet dated 21-9-1997 was issued to him as a measure of victimisation, and to curb his lawful trade union activities. In pursuance of the charge sheet an enquiry was ordered and then he was dismissed from service w.e.f. 27-7-98. The appeal preferred to the Chairman/Managing Director of the company was also dismissed. A conciliation was moved before the ACL (Central), Hyderabad and on the failure of the conciliation the matter was referred for adjudication.

The workman is not at all concerned with the demand raised by the other trade union in respect of the wages of 16 workers claimed. The workman was charge sheeted falsely alleging that he instigated other workers to go on strike. A domestic enquiry though, was conducted but not fairly, as such it is violative of the principles of natural justice. The enquiry officer was partisan in conducting the enquiry. He conveniently ignored the evidence of defence witnesses. There is no evidence on record in proof of the charges that the workman had committed misconduct. In spite of infirmities, the enquiry officer gave the findings which was taken into consideration and imposed the punishment alleging that the misconduct of the workman, was proved. The punishment of dismissal is disproportionate to the allegations of misconduct alleged against him. Hence prayed to set aside the impugned order of dismissal and to order reinstatement of the workman with continuity of service and all benefits.

3. The management filed its counter in which stated that on 21-9-97 in the first shift the workman herein had induced other workers to strike the work for settlement of the demand of wages 16 other workman, further, the workman had interfered with the duties of the shift charge hands and also responsible for the illegal strike which affected the coal dispatch to NTPC and FCI a fulfilled enquiry was conducted in which the workman had fully participated.

Before the E.O. the management had examined witnesses so also six defence witnesses on the side of the workman. The enquiry officer after due consideration had submitted his findings and he found that the charges were held proved. After considering the findings and taking into account of the gravity of misconduct, the management was left with no option except to impose the punishment of dismissal. The respondent company is an essential and public utility services so, no strike can be made without giving

notice and no notice was issued by the union for going on strike on 21-2-97 and 22-2-97. The workman went on strike making illegal demand to pay wages to 16 workers who have not performed duty. On account of the strike the company suffered loss and damage as such a disciplinary action was initiated. Hence prayed to confirm the impugned order of dismissal passed by the management as justified.

4. In a preliminary order dated 30-8-2000 passed by this Tribunal, it was held that the domestic enquiry proceedings are valid without prejudice to the rights of the workman to argue and point out as to the merits of the evidence on record and to consider Section 11A of the Act in deciding the proportionality of the punishment of dismissal imposed for the alleged misconduct.

5. During the final hearing, the evidence let in during the domestic enquiry was relied and marked as Exs M1 to M-18 by consent

6. The merits and demerits of the evidence of the domestic enquiry i.e. the statements given by the witness and the connected documents are to be reappraised so as to decide whether the charges levelled against the workman are proved or not. In the charge sheet Ex. M1 the following charges are levelled i.e., "You have booked your 'IN' time in Ist shift of 21-9-97 and it is reported that you have induced the workmen of Relay 'A' (Ist Shift) OCP-III CHP on 21-9-97 to struck the work demanding wages to 16 workmen who have not performed allotted work on 16-9-97 IInd Shift."

"It is reported that you have come to distribution site at OCP-III CHP in IInd Shift of 21-9-97 and induced the workmen not to resume duty until the above demand is fulfilled. It is also reported that you also interfered in the duties of Shift Charge-hands while performing their duties, asking them not to distribute. All the workmen of I and II shifts left the workspot at your instance. Thus, you are responsible for the illegal strike. As a result Plant was stopped and coal despatches to NTPC and FCI were affected. Thus, you are responsible for affecting work in progress."

The above act of your amounts to misconduct under Company's Standing Orders 25(11) and 25(24) which reads as follows:

25(11): Going on illegal strike either singly or with other workmen without giving 14 days previous notice.

25(24): Sabotage or causing wilful damage to work in progress or to property of the company.

7. The workman was asked to submit his explanation to the charge sheet. An enquiry was ordered by appointing an enquiry officer who is of the rank of Dy. General Manager. The workman had participated in the enquiry and he was given assistance of his Company worker Mr. T. Raju Reddy to defend Ex. M6 record consists of the minutes recorded during the hearing so also the statements of the witness. Ex. M7 is the enquiry report in which the reasons are given for holding workman guilty of the charges of misconduct.

8. Before dealing with the misconduct against the workman, the statement given by the management witnesses in support of the charges and so also the statement given by the defence witnesses requires reappraisal and appreciation.

9. Presenting Officer : who stated that on 21-9-99 he was an Executive Engineer in first shift of OCP-III CHP/RG and by 7.30 a.m. at the distribution point of CHP of the workman were booked in muster and were waiting for distribution of work by charged workman (P. Venkataiah) was also booked and was present at the distribution point. On enquiry from the charge hand of the shift why distribution of work was not being done, for which he replied that Mr. P. Venkataiah had stopped the workmen from going to distribution of work and on that he went to the charged workman and questioned him as to why he was not allowing the workmen from going for distribution, for which he replied that he as a union leader had demanded the payment of wages of 16 workmen of Second Shift on 16-9-97 and since their wages were denied the other workmen would not attend for distribution of work. He also replied that until and unless the muster of the 16 workmen of second shift were given he will not allow them to work. When he asked the chargehand to distribute the work, the charged workman threatened the chargehand not to distribute until the issue was settled and on that all the workman left the workspot at 9.00 a.m.

Similarly in the second shift on 21-1-97 the workman were booked within muster in the 1st shift and waiting for distribution point, while so the charged workman at 3.40 p.m. exhorted that the workmen will not attend for distribution and that the chargehand was threatened by him in case he distributes the workmen at 5.00 p.m. All the workmen left the spot so also in the night shift of 21-1-97 the workers were stopped from going for duty. Again on 22-9-97 1st and 2nd shifts he personally saw charged workman persuading the workers not to resume duty and as a result of which the Plant did not work, for 2 days i.e. 21-9-97 and 22-9-97 and consequently the coal dispatches to NTPC and FCI could not be made.

The charged-workman did not give any notice to the management for the strike as such the strike done by the workers for 2 days is illegal and charged workman was responsible. The above acts of the charged workman amounts to misconduct as per companies Standing Orders 25(11) and (24).

In the cross examination a question was put whether the charged hand not distributed the workmen on account of the threat of charged workman for which the answer given by the witness is that the charged hand remained at the distribution point.

10. MW1 is S. Suryanarayana Murthy whose statement is that on 21-9-97 he was on duty in third shift at about 11.00 p.m. i.e., shift changing time Mr. Janardhan Reddy and Prabhakar Reddy charged hands came and informed that the workers commenced strike in the first shift and that charged workman also came to shift managers room and he questioned P. Ramesh Babu (Under Manager) of the Plant as to why he got the work done at CHP with the deputation staff for cleaning the plant for which Ramesh

Babu replied that on the instruction of Senior Deputy Engineer, CCP-III CHP of the Plant Mazdoor from 7 LEP were allowed to work and on that the charged workman exhorted that he would stop the Mazdoor of 7 LEP from tomorrow onwards from attending the work.

In the cross examination the witness was suggested whether the charged workman was working in that shift and if not why he did not question him why he had come when he had no schedule. He was asked to furnish the number of workers as per Form-E register (Attendance Register) shiftwise and it was furnished for both days of work in A, B, C shifts giving details as 342 for 3 shifts and 170 another shifts on 21-9-97 and 22-9-97 respectively.

11. MW2 Rajmalu, Executive Engineer, whose statement is that on 21-9-97 at 6 CSP of CHP OCP-III, usually six workmen of CSP after distribution would report for duty to the incharge of the plant by 8.00 a.m. but workmen did not report to the incharge and on that he sent to the distribution point to enquire Mr. Neelayya, Charged hand is to why workmen have not attended the work who replied that the charged workman had stopped them as the demand of 16 workmen who worked, on 16-9-97 is complied with.

In the cross examination he was asked to which the charged workman was working and his answer is that he attends to General Shifts and further asked whether he saw him at the manway of OCP-III CHP RG and for which he stated Yes.

12. MW3 S. Neelayya, Charged hand : stated that on 21-9-97 for the 1st Shift he went to OCP-II CHP RG to distribute men reported for duty, while so the workman gathered at manway did not attend for distribution as usual and he enquired them the reason for not coming, for which they replied that they would not work thereby he reported the matter to deputy Engineer, CHP CCP III RS.

In the cross examination he was asked whether he booked the muster of charged workman in the first shift and whether he saw him at that time, for which his answer is that he is not aware of his duty in the 1st shift but he belongs to R/D General Shifts where-as he is a charged hand of R/A on further questioning he stated that he did not see the charged workman in first shift on 22-9-97 he had distribution point.

13. MW4 D. Ramesh (under Manager) : Whose statement is that on 21-9-97 at 3.00 p.m. he was informed that the workers have began strike from the first shift onwards. He went to distribution point in the 2nd shift to book the muster. Though he waited, the workmen did not come from the muster and they left at 4.00 p.m. at the end of the 2nd shift i.e., at 11.00 while he along with S. S. Murthy Ginnaya and Prabhakar Reddy were in the office room, discussing the 2nd shift position on account of the strike that time the charged workman had come there with other workers and questioned him as to why the workmen of 7 LEP were allowed to work in second shift and when he told him that they came on deputation and for which charged workman exhorted that 7 LEP workers could not work on deputation

and he would stop them from working. And in the cross examination he was suggested whether charged workman had talked to him for which he stated 'no' but he was taking with other persons that at 11.00 p.m. when he reported for duty and went to the manway for taking the muster of 3rd shift whether any one gave information that workmen were not coming for distribution and for which he stated that charge-hand did not report. According to him when he went to office room to seek instruction at that time Ramesh Babu (2nd shift Under Manager) S. S. N. Murthi (3rd shift Under Manager) and the charged workman and another were present there. He was asked to state out as a charged workman whose talking with D. Ramesh. After 15 minutes the Under Manager instructed him to distribute the workmen and accordingly he distributed for 3rd shift on 21-9-97. The plant had worked in 3rd shift of 22-9-97. In the cross examination he was suggested whether charged workman had come at the distribution point in 3rd shift of both days and whether he stopped the work at distribution point for which he stated that he did not prevent the work.

14. (MW5) K. Jangaiah (K. Janardhan Reddy) as stated that he reported for duty in 3rd shift on 21-9-97 and came to know that strike by workers commenced in 1st and 2nd shift. After taking muster roll of 3rd shift he went to Managers office room to take instructions from him at that time K. Prabhakar Reddy and another charge hand were there. He found charged workman talking to Ramesh Babu (MW4) and that he asked him to go out of the room as he would discussed with Ramesh Babu (MW4) so he came out.

15. MW6 (Ram Reddy) charged hand of 3rd shift who stated that on 21-9-97 and 22-9-97 the charged workman worked in R/D under his control. After turn out slip was received by him since the workers did not approach he could not distribute so he enquired the reasons as to why the workers are not attending for distribution and they told him that since 16 workers muster was in dispute and unless they were given they did not attend to the work. A suggestion was given whether he noticed the charged workman there and he said 'no' MW6 was also to strike and for which the answer is no.

16. The charged workman also gave his statement before enquiry officer in which he stated that on 21-9-97 he booked him in muster and went to distribution point for work, where he found group of workers discussing there for not giving muster to 16 workers who worked on 16-9-97 some other delegates of other unions were also present for discussing about denial of muster to 16 workers. The workers themselves have left the spot and that he did not instigate any workman and that he was not responsible for the workers to strike the work for these 2 days. The strike continued in the second shift on 21-9-97. He along with other leaders tried to convince the workers to resume duty and that he did not interfere with the duties of shift charge hand nor prevented them from performing their duties. He was cross examined as to who prevented him in attending in the work in the 1st shift on 21-9-97 and why did not work, for which his answer is that all the workmen did not go to work as the muster of 16 workers was denied and all the

workers in one voice have not worked. He was further asked why he was present in the 2nd shift even though his duty was over at 5.00 p.m. on 21-9-97 for which he stated that he along with other union leaders sent to the workmen to persuade them to resume duty and he was asked further why he had gone to 'CNR' and approached the Under Manager Mr. D. K. B and S. S. Murthy at 11.00 p.m. on 21-9-97, for which he said he did not go there. He was asked whether strike notice was given by his union CIO and his answer is that his union did not organise the strike and no notice was given to the management. Supporting witness B. Kajaiah stated that as usual he went for duty in the 1st shift on 21-9-97 by then all the workers were present along with the union leaders discussing about the demand of muster to 16 workers on 16-9-97. The leader could not convince the enraged workmen as to the grievance, and the workman the charged workmen had not organised the strike at all. A question was put to witness as to who organised strike and his answer is that all workers had gone on strike and they did not listen to union leaders on the issue raised in the demand. DW3 (M. Parvatalu) stated that he was booked to muster on 21-9-97 in the 1st shift. The out-muster was not booked as all the workman has not organised the strike. P. R. Charry (DW4) whose version is that the charged workman had not organised the strike. Narayana (DW5) also corroborated the same facts as spoken by the above witnesses. All the five witnesses have denied the suggestion that the strike was organised by the charged workman.

M. Venkataiah General Mazdoor (DW6) has stated that on 21-9-97 he reported for duty in 2nd shift and that he came to know from the 1st shift workmen that they have striked the work in connection of 16 workers muster and he did not notice the charged workman in his shift on that day. K. Arogyam (DW7) stated that on 21-9-97 at 11.15 p.m. he was booked for duty in-muster and when he went to distribution point the workman were discussing that first and 2nd workman have gone on strike and therefore it would not proper for the 3rd shift workers to work unless strike was called off so he left the duty at 11.30 p.m. along with other workers. He denied the suggestion of the presence of the charged workman in that shift one K. Sattaiah, charge hand was examined as independent witness from whom it was elicited that for 2nd shift duty on 21-9-97 also the workers did not turn up for distribution and that the charged workman was seen by him in the 2nd shift at distribution point. He did not support the role of him.

17. The enquiry officer had examined one Venkat Reddy Jamedar for SNPC OCP III/IG whose statement is that he distributed the security Guards to Security point at OCP 2 and 3 and attends to the petrolling duties on 21-9-97. After distribution of security guards in the 1st shift while on petrolling duty he went for petrolling and from 7.15 a.m. to 10.15 a.m. he was there and on that day the workmen went on strike in 1st shift which fact he noted in his report book maintained in his office.

18. On the basis of the statements given by the witnesses the enquiry officer submitted his enquiry report in which he gave his findings discussing the evidence of both sides. The enquiry officer came to

the conclusion that charged workman was responsible for the illegal strike on 21-9-97 which attracts standing orders 25(11)(24) as such the charge was held proved. On receipt of the enquiry report the management had issued a notice Ex. M9 to the workman to take the copy of the enquiry report in which enquiry officer found him guilty of the charges levelled against him and to submit explanation. The charged workman submitted his reply stating that there is no basis to make him liable for the charges and that he along with his union members have prevailed upon the striking workers to resume duty. So the charge may be set aside. The management issued Ex. M11 impugned order which to the effect that there are no extenuating circumstances which warrant lesser punishment than that of dismissal and there by dismissal order was issued for misconduct proved against him. 19. Ex. M12 is the copy of the appeal submitted by the charged workman to the Managing Director to revoke the punishment.

20. Section 22 of the I.D. Act has prohibited the strike and lockout in a public utility services and strike shall not be made in breach of contract unless (a) a strike notice given to the employer within 6 weeks before going on strike, (b) within 14 days of giving such notice (c) before the expiry of the date of strike specified in such notice (d) during the pendency of any conciliation proceedings and 7 days after conclusion of such proceedings. Clause (C) impose an obligation on an employer to send intimation of lockout and strike on the day on which it was declared to the authority specified by the appropriate government. Section 24 envisages that the strike or lockout shall be illegal if it is commenced or declared in contravention of Section 22 or 23.

21. Invoking companies standing order Nos. 25.11 and 25.24, the Management has imposed the punishment of dismissal to the workman on the ground that he had induced the workers to go on strike in the 1st and 2nd shifts on 21-9-97 and so also interfered with the duties of shifts charge hands not allowing them to perform the duties for distribution and thereby, he is responsible for the illegal strike and his act or omission amounts to misconduct as per the above said company standing orders and that the proved misconduct is grave and serious which does not warrant to impose lesser punishment than that of dismissal, so Ex. M11, impugned order was passed.

22. Whereas the workman's plea is that he has not at all connected with the cause of the workers in question muchless any of the workers were induced by him to go on strike.

23. Section 27 of the I.D. Act has dealt with regard to instigation or incitement of the workmen to go on strike by any person and the said act or omission means solicitation of instigation or incitement so as to provoke or encourage for an illegal strike. The I.D. Act has not provided a particular period to term it as illegal strike. In case of any instigation made to workers to strike the work when the workers are willing to work on Sundays, still it amounts to illegal strike. In a decision Supreme Court reported in Ram Naresh Kumar vs. the State AIR 1958 Calcutta page 445, this aspect was made clear for taking penal action as provided under Section 22, 23, 24 and 27 of I.D. Act against the persons responsible for going

on illegal strike or inducing the workers or for taking disciplinary action under company's standing orders. Whether the strike was a legal or illegal is to be decided by the authority appointed under the Act. It is for that reason Sub-Section 3 of Section 22 has placed an obligation on the Management to give intimation to the authority concerned about the strike call given by the workers. The said notice is mandatory but in this case the management had not given such notice. Even assuming that the workers of the respondent company had gone on strike in the shifts 1 and 2nd on 21-9-97. No conciliation or adjudication was made to decide whether it was a legal or illegal strike.

24. With regard to disciplinary action under the company Standing Orders 25.11, 25.24 the Management is required to prove that the charged workman had instigated the workers to go on strike and on account of the illegal strike the company had suffered loss. To prove the charges the management had adduced the evidence through its witnesses and evidence recorded by the Enquiry Officer is available on record covered by Ex. M6, which requires proper analysis and appreciation. Ex. M6 contains the statements of management witnesses and as well defence witnesses.

25. One Vijaya Kumar, Executive Engineer was appointed as Presenting Officer whose statement was also recorded as if he was an Eye Witness to the incident of 21-9-97. He gave statement that charged workman exhorted the workers and threatened the charge hands from distribution of the workmen.

He was allowed to be cross-examined. The Presenting Officer stated that the charged workman gave a threat the charge-hands in the 1st shift not to distribute the workmen and that he stopped the workers from doing the work and charge hands work was interfered with, so he could not distribute the workmen. The facts as spoken by him are not corroborated by two charge hands i.e. A. Raja Mallu (MW2), S. Neelaiah (MW3) Ramesh Babu (MW4) and Rama Reddy (MW6), K. Janaiah (MW5). The next witness MW1 stated that he attended the duty for 3rd shift about 11.00 a.m. while he was discussing with the charge hands the charged workman came to the shift Manager's Room saying that he wanted to discuss with the Manager's he and other charge hands were asked to leave the room and that the charged workman had questioned the duty manager as to why he allowed 7 LEP workers to work and he would stop them to work from tomorrow onwards. He neither stated about the alleged threat or inducement given to workers by the charged workman to go on strike. The next witness MW2 the Rajamallu (MW2) has stated that the charged workman belongs to General Shift on 21-9-97 and that he saw him in the 2nd shift at 3.30 p.m. on that date. He did not speak against him as to the allegations of charge sheet. MW4 (Ramesh Babu) has also not stated about the alleged instigation or threat given by the charged workman to the charge hands except to stating that he was questioned him why 7 LEP workers were allowed to work in 2nd shift. K. Janaiah (MW5) also has not stated against the charged workman. He stated that he had distributed the workmen who took their in-muster in 3rd shift on 21-9-97, so also the

additional witnesses security were examined by the enquiry officer have also not stated against the charged workman. Thus, except the uncorroborated facts of MW1 and MW2 about the workers not attending to duty in the 1st and 2nd shifts of 21-9-97 there is no tangible evidence worth while was let in. In the enquiry report Ex. M6 the findings of the enquiry officer are that the witnesses, MW1, MW4, MW5 since have stated against the charged workman that he came to CHP at 11.00 p.m. in the beginning of night shift on 21-9-97 where he was not expected to be there it is to be concluded that he was present at the spot with a motive to instigate the workers to do so illegal strike and apart from that other unions leaders were not present in other shifts.

26. Even though there is no positive evidence against the charged workman as to the allegation that on account of his instigation other workers struck the work, the enquiry officer gave findings that since the charged workman was present in the 1st shift he concludes that he was present there with a motive to instigate the workers. Such a reasoning is nothing but a prejudicial and partisan attitude adopted to see that he is involved either by hook or crook.

27. There is no hesitation to say that Ex. M7 findings which are arrived at was without basis, and thereby it does not stand to the test of judicial scrutiny.

28. No doubt a notice of strike is necessary under Section 22 of the Act in case of Public Utility Services establishment as defined under Section 2(n) of the Act, and that the respondent company is a public utility services, still whether the strike was illegal or not in a question for determination by the authorities appointed under the Act and whenever there was a strike the management shall be required to give an intimation to the concerned authority but significantly no such intimation was given by taking necessary steps for imposing a penalty under Section 26 of the Act. Cessation of work by a body of persons employed in an industry have concerted and refusing to work also constitute strike. However by means of strike the workers may seek for collective bargaining so as to prevail upon the management for the demands so it is necessary for the authority concerned to decide the matter whether the strike was legal or illegal. In this regard the management has not moved either for conciliation or adjudication.

29. As per standing orders an illegal strike may be a misconduct unless the action of the striking workman is proved to be an Act of misconduct. Either to impose a minor or major punishment as provided under company standing orders, the Court/Tribunal is required to consider the factual aspects and evidence and unless the material placed is found to be satisfactory, the charged workman cannot be held responsible of misconduct.

30. The concept of illegal strike and the implication of standing orders enabling the management to take action against the workers who resorted to strike was discussed in a decision reported in U.P. Rajya Sethu Nigam Karamchhari Sangh Vs. U.P. State Bridge Corporation Lucknow (199 II LLJ Allahabad at page 1219) which gives a clear idea that Section 26

of the I.D. Act has not prescribed that because of illegal strike the relationship of employer and employee or the contract of service would cease. However the management by virtue of the standing orders which has the statutory force may initiate disciplinary action. Though management had made efforts to prove the misconduct of the charged workman through its interested witnesses so to attract standing orders 25.11, 25.24 but it has miserably failed to establish it.

31. For the aforesaid reasons and taking into consideration of the factual and legal aspects involved in the dispute, I hold that the charges laid against the charged workman are not sustainable and consequently the impugned order of dismissal is hereby set aside.

32. In the result an award is passed in favour of the workman holding that the impugned order of dismissal passed by the respondent is illegal and consequently it is directed that the workman shall be reinstated with continuity of service and payment of back wages. Award shall be implemented within 30 days of the publication of this Award.

Dictated to the Shorthand writer, transcribed by him, corrected by me and given under my hand and seal of this Tribunal on the 27th day of April, 2001.

SYED ABDULLAH, Industrial Tribunal-I

Appendix of Evidence

No oral evidence on behalf of both sides.

Documents marked for the Petitioner :

NIL.

Documents marked for the Respondent :

Ex. M1 21-9-97—Charge sheet issued to the workman P. Venkataiah.

Ex. M2 12-10-97—Letter addressed to the workman to submit his explanation.

Ex. M3 18-10-97—Office Memo regarding appointment of enquiry officer and presenting officer.

Ex. M4 23-10-97—Letter from the petitioner requesting for adjournment of enquiry.

Ex. M5 27-2-98—Letter from the petitioner requesting for adjournment of enquiry.

Ex. M6—Xerox copy of enquiry proceedings.

Ex. M7—Xerox copy of enquiry report.

Ex. M8—Arguments submitted by the workman in the enquiry.

Ex. M9 4-5-98—Notice issued to the workman.

Ex. M10 13-5-98—Representation submitted by the workman to G.M. OCP II & III.

Ex. M11 20-7-98—Dismissal order issued to the workman by the General Manager Ramagundam Area-III.

Ex. M12 23-7-98—Request by the workman to revoke dismissal order addressed to the Chairman & M.D. SC. Company Limited, Hyderabad.

Ex M13 28-7-98—Copy of the letter addressed to the General Manager, S.C. Co. Ltd., Hyderabad Ramagundam by Sr. Divisional Engineer OCP.III.CHP.RG. regarding Non-serving of dismissal order on the workman.

Ex M14 29-7-98—Copy of the letter addressed to the General Manager, S.C. Co. Ltd., Hyderabad Ramagundam by Sr. Divisional Engineer OCP.III.CHP.RG. regarding Non-serving of dismissal order on the workman.

Ex M15—Letter of the Sr. Divisional Engineer OCP.III Respondent addressed to General Manager RG.III regarding remittance of salary for the month of July, 1998 along with postal return endorsements.

Ex M16—Xerox copy of minutes of conciliation.

Ex. M17—Management views before the conciliation officer.

Ex. M18 9-4-98—Failure report submitted by ALC(C)-II to the Secretary to Government of India Ministry of Labour, New Delhi.

नई दिल्ली, 31 मई, 2001

का.आ. 1375.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टिरप कोलरी, टीनसुकिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय गोहाटी के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 28-5-2001 को प्राप्त हुआ था।

[मं. एन-22012/562/99-प्रार्. आर. (सी-II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 31st May, 2001

S.O. 1375.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Guwahati as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Tirap Colliery, Tinsukia and their workman, which was received by the Central Government on 28-5-2001.

[No. L-22012/562/99-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL, GUWAHATI, ASSAM

Reference No. 17(C) of 2000

PRESENT :

Shri K. Sarma, LL.B.,
Presiding Officer,
Industrial Tribunal, Guwahati.

In the matter of an Industrial Dispute between :
The Management of
The Manager Incharge Soumya Mining Pvt. Ltd.,
Tirap Colliery, Tinsukia.

Vs.

Their workman rep. by General Secy.,
Coal Mine Workers Union, Tinsukia.

Date of Award : 26-4-2001.

AWARD

The reference arising out of the Government Notification No. L-22012/562/99/IR(C-II) dated 28th July, 2000 relates to the dispute indicated in the schedule below :

“Whether the transfer of workers from Tirap Colliery to Raniganj is justified, specially when they have been engaged at Tirap Colliery without giving any appointment offer in writing.”

In this reference, management is present. The notice upon the workman has been served properly but they have not turned upto contest the case. The management today files a petition stating that he workmen have no furnished necessary document in support of their case enabling the management to file their written statement. From the perusal of the record, I find that after receiving notice, the workman has not appeared nor any step is taken from their side. This Industrial Dispute has been raised at the instance of the workman and hence it is the duty of the workman to appear and take necessary step for adjudication of the dispute. As the workman is not interested in prosecuting the reference, in view of this, I have no other alternative but to hold that there exists no dispute between the parties and same may be disposed by passing a no dispute award. Accordingly. No dispute award is passed by disposing the dispute finally. Prepare an award accordingly.

K. SARMA, Presiding Officer

नई दिल्ली, 6 जून, 2001

New Delhi, the 6th June, 2001

का.आ. 1376:— केन्द्रीय सरकार संतुष्ट हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (इ) के उपखण्ड (vi) के उपबंधों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का.आ. 2807 दिनांक 6-12-2000 द्वारा भारतीय खाद्य निगम को उक्त अधिनियम के प्रयोजनों के लिए 7-12-2000 से छह मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छह मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (इ) के उपखण्ड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 7-6-2001 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[फा.सं.एस.-11017/5/91-आई.आर. (पी.एस.)]

एच. सी. गुप्ता, अवर सचिव

S.O. 1376.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provisions of sub-clause (vi) of the clause (n) of Section 2 of the Industrial Dispute Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S.O. No. 2807 dated 6-12-2000 the services in the Food Corporation of India to be a public utility service for the purpose of the said Act, for a period of six months from the 7-12-2000.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months ;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a public utility service for the purpose of the said Act for a period of six months from the 7th June, 2001.

[No. S-11017/5/91-IR(PL)]

H. C. GUPTA, Under Secy.

